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ABSTRACT

Investigated in this study are the school sorting process (how students are matched with schools, courses, and teachers) and the possible positive effects of mandating that schools disclose how this process occurs. After an introduction, chapters 2 and 3 present findings about the sorting practices in seven California school districts. It was found that most schools do not have mechanisms for informing people about school sorting. Examples of materials schools use to inform parents of other matters mandated by school law are contained in chapter 3. Chapter 4 provides a theoretical basis for school disclosure by investigating information disclosure in general. Chapter 5 lists possible virtues of disclosure, including increased parent "take-up" of the choices open to them, prevention of unfair practices, and greater public satisfaction with education. Chapter 6 investigates possible negative effects of school disclosure, including increased costs, increased work for personnel, professional demoralization, and parent confusion from information overload. Chapter 7 presents a policy analysis of school sorting disclosure. Chapter 8 examines the possibility of a due process right to school sorting disclosure. In chapter 9, a statutory analysis of school sorting and disclosure is undertaken. Conclusions and recommendations presented in chapter 10 include the recommendation that social experiments in school sorting disclosure be undertaken on the state level. (Author/JM)

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SCHOOL SORTING AND DISCLOSURE:

Disclosure to Parents as a School Reform Strategy

Stephen D. Sugarman

with Lee S. Friedman, John E. Coons and Annette Lareau

September, 1982

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I want to express my appreciation to the National Institute of Education for sponsoring this research project. It gave me the opportunity to think about matters potentially critical to the healthy future of public education. The project also facilitated my continued fruitful collaboration with Lee Friedman and Jack Coons on problems of educational policy. I was fortunate to be able to enlist the help of talented graduate students to do field research and to conduct literature reviews on a wide range of subjects. Annette Lareau carried the laboring oar in this respect; Steve Olsen, Mike McCann and Patty Ratliff also contributed importantly. Connie Curtin, Sharon Johnson and Emogene Sheid have performed admirably in producing what has turned out to be a very long manuscript.

Although there have been many changes at NIE during the course of this project, Ron Anson, my program officer, has remained -- always patient and always encouraging. I am grateful not only for his continued support but also for his having given me opportunities to present some of my ideas to other NIE staff members and to other NIE grantees at conferences and meetings over the past few years.

Stephen D. Sugarman
Berkeley, California
September, 1982

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Chapter 1

AN INTRODUCTION TO INFORMATION AND SCHOOLS: SHAPING OUR ISSUE

This report presents the results of our inquiry into the potential importance of certain information disclosure strategies to the reform of public education. We first focused our attention on the routine sorting of children into schools, courses and classrooms. Having mapped that process, we then explored possible benefits and costs of the disclosure of information about it to parents.

I. Information and Schooling Generally

Many aspects of schooling and the public school system have been the focus of those interested in consumer and citizen information. Common practices such as public election of board members and public board meetings are conventional open government strategies that serve to inform the public about schools. Recently, innovative, information-generating means of public participation have been tried in public education. For example, in order to open up educational collective bargaining to the public, some districts are now required to publicize the opening positions (and, on occasion, subsequent offers) of both sides; school site, parent advisory councils have been set up and given a certain measure of real power over the use of categorical aid funds for the disadvantaged; and some processes for selecting state "approved" textbooks have been subjected to public observation and participation. Another information device, of course, has been the "commission," countless numbers of which have been charged with finding out what is wrong with one aspect or another of schooling. A further information strategy has been to make state public records acts applicable to public schools; they represent a largely unused lever of access to information that we will have more to say about in a later chapter.

Turning to the level of individual consumer information, to date there have been rather few complaints about uninformed choice in education. To be sure, educational voucher supporters go on about the need for information in their system; and the FTC consumer protection branch has concerned itself with the advertising and marketing practices of private schools and colleges. The absence of attention to the issue in public education perhaps stems from a perception that the public school system is simply not a system of choice; we think this is an inaccurate perception, however, and will later explore the theme of informed choice in public education in some detail.

Yet we don't mean to leave the impression that consumer information concerns have been absent in public education. For example, pressures to reveal school-by-school test scores have been especially strong, with the result that in many places this has become a routinized annual practice. Local newspapers usually carry the detailed reports out to the citizenry.

Shifting our attention somewhat, secrecy in some aspects of schooling has given rise to concern about official abuse and neglect; and some important remedies that have been sought rely on disclosure. A good example is the resort to hearings, especially in disciplinary matters. The Supreme Court has decided that pupils generally be offered some sort of hearing prior to suspension or expulsion from school; and lower court, legislative and local district rulings in some places now also insist on hearings before involuntary transfers to "continuation" or other "special" schools and before the administration of corporal punishment At a minimum, these procedures require that the student is to be given an explanation of the proposed treatment and a chance to put his or her two cents in. In this way it is hoped that some erroneous decisions will be nipped in the bud -- both because the decider will learn something from the student and because requiring the communication of reason will put deciders on the line in ways that cause them to self censor what otherwise would be their own excesses.

Student records acts are another informational scheme aimed at controlling abuse. On the one hand, they seek to block improper access to student files by outsiders; this is a privacy concern. On the other, they assure student and family access to those same files. It had long been feared (apparently with good reason) that in many cases inaccurate and/or invidious comments were placed by school personnel in secret student files, which information unfairly "typed" students in the eyes of future teachers. Providing family access (and, often, the opportunity to rebutt, if not to exclude, material) again employs disclosure in order to try to check abuses.

This brief discussion is meant to show first that disclosure strategies are no strangers to elementary and secondary education. It is also meant to provide a broad context within which it will be clear that we have taken but one narrow cut. For example, in view of these many school-related information strategies now in place, one approach to schooling and disclosure would be to examine and evaluate the sensibility and effectiveness of one or more of them. We did not do that, however.

II. School Sorting and Disclosure

We started with a special interest in the processes of public school sorting. We wanted to learn more about how ordinary school children are matched up with their schools, their courses and their teachers. This seemed to be an important, yet rather understudied, aspect of public schooling. We also sought to confirm our suspicion that routine sorting goes on with rather little attention given to disclosure. And, finally, we wanted to think about whether there is a case to be made for improving public education by enlisting in the school sorting process disclosure strategies that are used elsewhere. In a nutshell this is the study we have undertaken.

We should emphasize that we did not study the important place of disclosure in the treatment of either the handicapped or the excluded; this is not only because others have already focused on them, but also because, so far as we were concerned, special education and suspensions and expulsions involve relatively too few children. Our target, rather, can perhaps better be described as public education's ordinary children, rather than its exceptional children. This does not mean we paid no attention to individual decisions, or to sorting practices that actually applied to only a few children. But even our special treatment cases generally involve children broadly viewed as in the mainstream.

It is probably an advantage, in our view, to think about disclosure in the context of a process that directly involves decisions about children. This is because it is intuitively easier to imagine and consider the potential impacts of disclosure policies. To be sure, this doesn't assure that the impacts would in fact be either greater or easier to measure than impacts of disclosure less immediately related to decisions about children.

Disclosure and sorting also appeared promising because it was clear at the outset both that a range of objectives could lie behind calls for information about sorting and that, in turn, the information sought would be of different sorts. In this way we could hope to study a variety of functions of information without feeling pressure to study everything about schooling. In short, the ordinary sorting process seemed a suitably rich, yet at the same time restricted focus for our inquiry.

Finally, it is fair to say that we selected a topic for inquiry that on an *a priori* basis could plausibly turn out to represent an avenue for bettering public education. During the past 15 years we have participated in a variety of efforts aimed at improving public schools, or at least improving the way they serve disadvantaged classes of school children. Some of these proposed reforms have been implemented, at least in part; others have not and probably won't be. Some of the changes have been reasonably successful. Yet public schools are still in trouble, with the public at large and with particular groups.

Here, then, is a new idea -- disclosure of information about sorting to parents. It might actually improve things. Or would it? Is it really promising? Why? Wouldn't it be costly wheel spinning? Or, couldn't it possibly make things worse? These are things we wanted to reflect upon, and this study has given us that opportunity.

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Chapter 2

SCHOOL SORTING PRACTICES: EVIDENCE FROM FIELD RESEARCH

INTRODUCTION

This chapter and the next discuss the research findings from our investigation of the sorting practices in seven California public school districts. At the school level we examined the ways in which students are annually assigned to courses and teachers (Part I), permitted to change teachers (Part II), and promoted or retained (Part III). At the district level we looked at how students are assigned to particular schools and the processes available to students whose families want them to attend a school outside their residential attendance area (Part IV). At the same time we studied how schools disclose information to parents with respect to each of these areas, looking at both formal and informal methods of disclosure (Chapter 3).

These chapters are a synthesis of our research findings and contain only selected examples from the seven districts we studied. In the Appendix, we include the field reports of each of the districts. Readers interested in more detailed descriptions should consult these reports.

Although an effort was made to study districts of differing sizes and compositions, the seven districts and their 125,000 or so pupils may not fully reflect educational practices throughout California. After all, we actually visited only sixteen elementary schools, seven junior high schools and eight high schools. Still, we hope that experienced observers of public school operations will find that our descriptions reasonably capture much of what now occurs in school districts both in California and throughout the United States. The sorting of ordinary school children is, so far as we have been able to determine, a badly understudied subject; hence, quite apart from our special interest here in information disclosure strategies, we hope that our inquiry into sorting itself is a first step toward more systematic research.

PART I: ASSIGNING STUDENTS TO TEACHERS

We begin our discussion by describing how students are assigned to their teachers. In the districts we visited, this process was within the jurisdiction of the local school site. Although a few district officials provided informal input into the process, and although there plainly are some broad norms which school level personnel recognize, none of the districts had centralized this procedure. Not surprisingly, procedures for "sorting" children into classrooms differed considerably between the elementary, junior high school and high school levels, and we will describe them separately. In addition, within each of these levels, we found marked variations both among districts and among the local schools within districts.

A: Elementary Schools

As each school year draws to a close, elementary schools face the task of assigning students to a teacher for the following year. In all of the elementary schools we visited, the basic responsibility for this falls to the school principal; district involvement is very limited and informal. Schools vary considerably in their sorting procedures. We discovered differences as to how principals share their responsibilities for making assignments, the criteria that are utilized and the role parents play in the process. Moreover, we found that a school's practice with respect to one aspect of the sorting process (e.g., whether the principal has delegated substantial duties to teachers) does not well predict its practice in another area (e.g., the assignment criteria used).

It is important to note at the outset that the number and range of sorting alternatives available to school staff are importantly influenced by other school features. Imagine for a moment a small elementary school with seven grade levels and seven teachers who have been at this school for some years. Assume further that each teacher takes one grade -- the same grade -- year after year. In such a school, the sorting practices we discuss here are not an issue: there are no real alternatives available in making class/teacher assignments. Although we cannot estimate how common this school structure is, none of the schools we visited was quite so simply organized. It seems safe to conclude, therefore, that assignment to teacher is a genuine issue in most elementary schools. Often, schools are large enough to have a number of classes at each grade level. Many schools we visited have numbers of multi-graded classrooms with, say, three grade levels in each room. Other schools combined some single grade level classes with so-called combination classes (e.g. first and second graders together).

In addition to varying the configuration of classroom structure, schools differ in teacher staffing patterns.

Some schools rely heavily on team teaching; others do not. Some principals explicitly encourage teachers to switch grade levels every few years; other principals encourage stability in staffing patterns. These variations have a significant, although perhaps unintended, effect on the parameters for sorting. They determine not only how many and which teachers will instruct, say, third graders next year. They also create guidelines for sorting. For example, all the schools we visited that had combination classes reported that they tried to assign to those classes the students who were able to function effectively without continuous teacher supervision (so-called "independent" lerners.") Now imagine a school with one combination class and one single grade class at each grade level; plainly, then this structure together with the policy on independent learners imposes significant restrictions on sorting possibilities.

In short, the educational structure of schools "sets the stage" for sorting. Many schools function with the same educational structure for years. Some schools we visited had recently revamped their format. So far as we could determine, the school principal typically has the formal power to determine classroom structure and staffing distribution to the grade levels. What makes principals favor some arrangements, alter established patterns and the like are things we did not study.

Assume now that the school's structure is in place and there are two or more teachers to whom the school's existing (non-graduating) pupils may be assigned for next year. What happens? Who decides?

1. Delegation of Authority

In general, schools carry out the sorting process with the aid of cards containing information on each of the student's academic standing, social behavior and maturity. Frequently called articulation cards, they are created solely for the purpose of making class assignments. Two samples are reprinted below.

Although teachers are responsible for filling out these articulation cards, their review and their use in the creation of class lists differs. In some schools, the principal takes primary responsibility for making sorting decisions. Relying on the articulation cards, these principals will typically construct tentative class lists. Teachers are then asked to review the lists, note any objection and give reasons. Generally, rather few changes in the tentative lists are made by the teacher review process. Sometimes principals rely primarily on the advice of resource teachers (e.g., reading specialists) rather then regular classroom teachers.

In other schools, class assignments are handled entirely by teachers. To be sure, teachers may be informally aware of the principal's views; yet the principal's input is at most informal. But among the schools in which teachers make up class lists, we found variations in procedures. In one school, the "sending" teachers alone create classes for next year; in others the "sending" and "receiving" teachers for each grade level must

ROOM #__________ DISCIPLINE (+ -

NAME____________________________ GRADE______ MGM PHRC SM LC SP ESL
LAST FIRST

RETAINED AH VH

PRESENT READING LEVEL:______________________________ PAGE #________
NAME OF READER

PRESENT MATH LEVEL:______________________________ PAGE #________
NAME OF TEXT

READING ABILITY: PHONETIC: STRONG________ AVERAGE________ POOR______

COMPREHENSION: STRONG________ AVERAGE________ POOR______

MATH ABILITY: STRONG________ AVERAGE________ POOR______

OVERALL WORK HABITS: STRONG________ AVERAGE________ POOR______

TEACHER COMMENT:____

MGM = Mentally Gifted Minors

PHRC = Physically Handicapped, Regular Classroom

SM = Sensory Motor (Title 1 program)
Entire kindergarten involved in this reading readiness program.

LC = Learning Center
Children scored below 25th percentile on CTBS test.

SP = Speech Class

ESL = English as a second language.

Retained = Note if the child has ever been retained or will be retained this year.

H = Handicapped

Visually Handicapped = For children who are blind or partially blind.

Rm. #_____

Name____________________________,Grade(Sept)_____, Birthdate__________WH__,SP__,BL__,
Last First ASIAN__

Prog. Participation: Gifted____, L.C. Rdng._____. L.C. Math_____

Name of Last Reader:____

Complete__________or Pg.#__________Rdg. Achievement Score________________

Reading Ability:	Oral:	Strong__________	Average__________	Poor__________
	Phonetic Skills:	Strong__________	Average__________	Poor__________
Math Ability:		Strong__________	Average__________	Poor__________
Overal Work Habits:		Strong__________	Average__________	Poor__________

Teacher Comments: (Noting Special Problems)

Should not be placed with____ together and decide. (With sending teachers seeming to have the greatest voice based upon their experience with the children involved.)

In yet other schools the teachers and the principal seem to share the responsibility for making class assignments. For example, some schools have a large board containing slots for students' articulation cards. The entire staff meets and sending teachers provisionally place the cards in the slots. The staff discuss the arrangement and make revisions. The adjusted placements are displayed in a school office for several days. Staff are expected to stop by to review the board further and to flag cards where they have misgivings about the placement. The principal and the involved teachers discuss and decide the flagged cases. At a predetermined date, the placements are "frozen" and class lists prepared.

The following table displays the variation in the allocation of authority that we found.

Distribution of Authority for Making Class Assignments in Schools Visited

Principal primarily, with resource teacher input	3
Principal primarily, w/ classroom teacher input	2
Teachers and principal shared responsibility	6
Teachers primarily, with principal input	2
Sending teachers alone	1
Sending and receiving teachers together	2
	16

Why do principals share this responsibility differently? We're not very clear about that. A few of the principals we interviewed did volunteer explanations, however. For some principals, it is a matter of educational philosophy. For example, two principals said that it is not appropriate to have teachers make assignments because teacher's friendship networks will have undue influence on sorting and lead to imbalances in class composition. Having witnessed teachers giving good students to their friends while dumping behavior problems on teachers they dislike, these principals have "deep reservations" about delegating this authority to teachers. (Of course, principals too might make similarly biased placements because of their own friendships.)

Other principals base their method on a quite different philosophy. Believing that teachers are the individuals with the most information about students, these principals firmly think it is educationally wise for teachers to be responsible for classroom assignments.

Management style also appears to influence behavior here. One principal stated that as "the boss" of the school and the individual responsible for handling complaints, he should control this task. Another principal, however, seeks to facilitate staff participation in school affairs and loyalty to the school by sharing the responsibility for making placements. Finally, two principals mentioned that their approach to sorting is simply a matter of efficiency; to have the principal or vice-principal perform this task is seen as the best use of the school staff's time.

What is clear, however, is that some principals prefer a pattern and will use it throughout their careers. Since these principals implement their favored pattern of sorting in all of the schools in which they work, the result is that the arrival of a new principal at a school frequently leads to a change in practices.

We have now described who makes assignment decisions. Next we look at how they are made.

2. Criteria: two norms -- balance and individualized treatment

Although elementary school principals and teachers clearly follow certain criteria in making classroom assignments, the criteria are formally written down in only a few schools. More often, the criteria are informally shared in staff meetings and through staff friendship networks. Although there are important variations, schools appear to share two overarching norms.

First, schools generally share the norm that classes should be "balanced", which appears to mean largely indistinguishable from one another. Schools thus attempt to create classes with an equal number of differing sorts of students. All of the schools we visited, for example, try to balance the number of discipline problems in each class. This norm assumes that a child will receive a sound education from any member of the staff, that all teachers are essentially alike and that it is educationally desirable for teachers and children to have an equal distribution of students with differing strengths and weaknesses.

The pressure for balanced classes was emphasized over and over, and several schools reported that an imbalance of students in classes had prompted deep conflicts among staff members. One school, for example, had recently experienced a rather bitter conflict between two teachers at the same grade level when one teacher felt that she had been "loaded up" with the problem students while the other teacher was free from them. Staff conflicts such as these were said to be disruptive to the functioning of the school, absorbing large amounts of staff time in mediating and resolving the conflicts. Quite apart from the issue of staff morale, many school officials believe that classrooms with a similar mixture of students is the best educational setting for students in any one school.

A second general norm guiding sorting decisions is somewhat contradictory to the first norm. It is essentially a criterion of individual need. This norm presumes that both students and teachers have idiosyncracies and that both personality conflicts and different learning and teaching syles are to be found in elementary school. Accordingly, it is believed that some children are better served by one teacher than another. Matching the special needs of students with the particular talents of teachers is thus viewed as the proper educational practice. For example, shy, timid children are often directed to an understanding teacher, while rowdy, rebellious students are placed with a teacher with a firm hand.

As the norms are partly contradictory, our sense is that the second norm most often guides sorting decisions within the framework of the first norm. In other words, broadly speaking, the special needs of students seem to be considered within the context of creating balanced classes. Consider this example. There are eight third grade students who have created discipline problems in the classroom, and two fourth grade teachers. The overriding objective, then, seems to be to assign four troublemakers to each. Hence if six of the disciplinary problems are thought to need a teacher with a highly structured classroom and a firm manner and only one of the fourth grade teachers operates in this manner, that teacher will not get all six. However, the four he or she does get are likely to be from the six who should most benefit from the firmer style.

As we said, schools "balance" their classrooms. But besides seeking to distribute evenly those pupils who are discliplinary problems, what do they balance? First the schools everywhere try to balance the number of girls and boys in each class. Racial balance is frequently an objective. The uniform distribution of "leaders" and "role models" was noted by a few schools. Perhaps most important, most of the schools we visited tried to create classrooms with a similar mixture of students in terms of their academic achievements.

As noted earlier, articulation cards are employed in this task. Schools use differing bases for ranking a student's academic achievement level. Some rank overall academic standing; others rate ability; a few provide space to note the student's progress in terms of a specific reader and page or ask teachers to report which specific language and reading skills the student has mastered.

One difficulty here is that teachers may apply different standards when ranking students. A few schools deal with this problem by spelling out in detail the proficiency level skills which are expected at each grade level; sorting then can be based on these details. Sometimes when teachers are known to be "easier" than others in evaluating their students, adjustments can be made when creating classes even if the teacher rankings are quite general; for example, in one school we were told that the "2" which one teacher gives her kindergarteners is understood to be equivalent to the "3" of the other teacher.

In addition to ranking students on academic characteristics, teachers often provide individualized comments pertinent to sorting: "Johnny should be separated from Tommy Rodgers," or "cries easily." Once the articulation cards are assembled, two rather differing procedures for creating balanced classes are employed. Many schools begin by randomly "dealing" the articulation cards into piles representing the desired number of classes. Once the entire deck has been dealt, school staff check the distribution of students by counting the number of boys, girls, discipline problems, students of differing ability, and so on. Adjustments are then made to even out the balances; at the same time staff separate certain youngsters, meet a student's special need or honor parent requests (to be discussed below). Nonetheless, with such sorting schemes, a pupil ends up in a class based upon the luck of the draw, unless there is some affirmative reason to shift him. Indeed, at the extreme, school officials attempt to create balanced classes to which any teacher might be assigned, and then in fact do randomly or arbitrarily assign teachers to them.

Other schools approach the problem in reverse order, starting with individual characteristics. The initial distribution is not random but instead teachers place students in classes which they feel are be best for the children, assuring through subsequent adjustments that balance is reasonably well achieved. In theory, under this approach individualized judgment about each pupil is specifically contemplated; and, in general, the assignment process starts with particular teachers for each classroom in mind. Some of those we interviewed argued that individual matching is really only valuable for some children, that many children "just are not affected by teacher-pupil chemistry particularly," but rather are influenced by other factors, including peer group. This suggests that some judgment about classroom composition is thought important and is sometimes made. But how?

In the end school staff found it difficult to articulate to us exactly how they weigh and synthesize the various pieces of information they have regarding the students and the school's sorting needs. Moreover it was difficult for school officials to explain to us how they decide to allocate children when there are more than enough from which to choose to serve "balance" objectives: which boys, which blacks, which low achievers, which leaders, etc? As one kindergarten teacher commented:

> It gets to be little picky things. For example, there is one teacher here who doesn't mind the smart-alecky child, if the child is academically smart. She enjoys children like that. So, normally when you have a child like that, you give that child to her. Or, there are children who love to be on the stage and in assemblies. There is a teacher who loves to be on the stage and in assemblies, so I give children like that to her. I give children to the teacher where they are going to be the happiest.

Although in our work, we were not able to penetrate further the decision process, understanding the precise criteria used in placement is an important task. Even if the opportunities are limited, it is plainly possible, for example, that teachers protect, punish or reward individual students (or teachers) in the course of making assignments. If so, such decisions -- or some of them -- might be thought quite inappropriate or unfair. It is also possible that teachers carry around in their heads complex formulas designed to predict the child's potential academic growth and use those in making assignments. If so, are these formulas reliable? Maybe certain teachers know that some of their colleagues are bad teachers and assign to them the students who will be least hurt thereby. Is this the best policy choice under the circumstances? These are intriguing possibilities, but possibilities requiring highly sensitive research tools to document. We discussed "bad teachers", for example, with only one principal whose policy is to even out students' exposure to "bad teachers," trying especially to prevent situations where a student has bad teachers three years in a row.

Plainly the school has a difficult problem here. The ideal of equal educational opportunity and the wish of the typical family to have "the best" teacher for its children makes it difficult for schools to acknowledge that some of their teachers are clearly poorer than others. Yet this is surely so and something about which most schools today can do relatively little, what with tenure rules, hiring policies, etc.; indeed, even under the best of circumstances, a school can not really hope for a staff that is ideally best for its student body; thus, some students necessarily will be served better than will others.

It is worth contrasting all of this with the process typically used in the placement of entering kindergarten students. Although a few schools do test such children and ask mothers to fill out a questionnaire regarding the child's social, emotional and intellectual development, schools generally believe that they rarely have adequate information about these children. As a result (apart from parental requests, discussed below) the usual approach is to assign students to kindergarten classes at random, checking only to ensure an even distribution of boys and girls.

3. Parental Requests

An important factor in the sorting process so far ignored is parental requests for teachers for their children. Although all of the schools we visited had received at least one request from a parent for a specific teacher in the following year, we found a significant variation in the number of requests received. Some schools had but a handful of requests; others had 20 or so; and a couple of schools estimated receiving well over one hundred requests in the 1980-81 school year. These latter schools, in short, had more than fifteen percent of the families requesting particular teachers. As we will see later, some schools solicit or encourage parental requests more than do other schools.

It was difficult for school officials precisely to describe the impact of parental requests on the sorting process. Schools do appear to have a uniform stance to a request to *avoid* a particular teacher: school officials almost always granted them. This is a delicate situation since principals don't want to undercut teacher morale; yet nearly all school officials believe that it is foolish not to honor such requests, since otherwise school will be "fighting the parent" all year long. Requests so phrased are, however, rather uncommon and typically come from families that either have had bad experience with the particular teacher previously (say, with an older sibling) or else have heard about bad experiences through word-of-mouth.

Affirmative requests for particular teachers, seem to be handled differently. School officials who receive few parent requests say that they generally honor all or nearly all of them. And although the official receiving the request may ask for the basis for the request, the answer given does not seem to matter.

In schools where a large number of parents make requests, the situation is more complicated. The main problem, according to officials we saw, is not so much classroom capacity; rather, granting all requests would conflict with the norm of balance in the classrooms. Parents of children of high academic achievement tend to be overrepresented in the pool of parental requests. In addition, they tend to agree as to which teacher(s) they prefer. As we saw earlier, however, school officials are reluctant to create classes which concentrate the academically talented students in one class.

As a result, some school officials do not grant all the requests they receive. Unfortunately, school staff could not easily provide us with a detailed explanation of the way in which they decide which requests will be honored. The individuals we interviewed made generalizations: that they evaluated the situation, that the children's needs and the school's resources were considered, that they made decisions that were in the best interest of the child. Schools do not seem to have systematic guidelines for use in resolving these situations. Indeed, schools could not even report precisely the number of requests which are denied, although it does appear that even in high-request schools a majority of the requests are honored. Some schools try to deal with this matter by asking that parents describe the educational environment which they think will be best for their child. Other times, principals ask that parents provide the names of two teachers they will accept. These approaches can provide the school with somewhat more flexibility in dealing with requests. It would seem that they also give savvy families opportunities for gamesmanship in that they can learn and give the "reasons" to which the school favorably responds.

The receptivity of schools toward parent requests differs. Some schools seem uncomfortable with parents requesting particular teachers. In one school, for example, the principal responds to a parent's request in the following fashion:

> All of our teachers are very good here. We are sure that you would be pleased with whichever teacher was assigned to your child. Nevertheless, we will make an effort to place your child with that teacher.

Other schools welcome parental requests in selection process, publicly calling for parental input. One school, for example, announces this in a school bulletin; other schools send a letter home specifically on this issue. Even these schools, however, stress that they can not guarantee that all requests will be honored.

Schools which solicit parent input on sorting decisions typically set a deadline for receiving that input. The procedure for receiving the input is generally informal. Parents can speak with the principal or teacher either in parent-teacher conferences or on the phone or in special interviews. Parents also can write letters to the teacher or the principal. School officials believe that elementary school families rely on previous experience with the school or word-of-mouth in determining which teachers to request.

Parent requests appear to have an impact on school dynamics apart from the sorting process itself. For example, some of those we interviewed argue that a large number of parental requests for some but not other teachers has a negative effect on teacher morale and staff interpersonal relationships. It is clear that at times parental requests have contained derogatory statements about teachers which have become public information. Quite apart from this, the pattern of parental requests is thought to affect teachers' reputations in the community in important ways. It is not clear whether the pattern of parental requests can or does serve to stimulate better teaching or to improve competence. Indeed, the impact of parental requests on schools very much needs more investigation than could be attempted in a study of this sort.

Some of the "negatives," however, seem readily avoided. For example, in one school, the principal took steps to protect his staff from derogatory comments which would "make persons uncomfortable" by editing or rewriting the parents' written request before passing it on to teachers for making class assignments. In another school, the principal initiated a new procedure which provided teachers with privacy. Earlier, parent requests had been put in mailboxes, in full view of other teachers to the discomfort of unpopular teachers.

Of course, in close knit communities parents may start "rumor mills" regarding teacher strengths and weaknesses whether or not parental requests are made. If negative images of teachers, which the principals believe to be incorrect, are made, teachers may be senselessly wounded. If this inaccuracy infects the request process the harm is probably compounded. In any event, combatting rumors is a continuing problem for some school administrators. One principal "refused to allow anyone to badmouth a teacher" and confronts individuals in public settings if "badmouthing" occurs.

4. Notification

Having made classroom assignments for the following year, schools have differing practices for notifying parents and children. In some schools, the children's final report card identifies the classroom number (or section) which the child will attend the following year. At times, the report card also names the prospective teacher if known. Other schools post class lists on the front door of the school on the first day or a few days before the beginning of the new year. Still others mail home information sheets containing both the teacher's name and classroom number and other information on school matters such as the parent-teachers association, bus routes and school lunches.

5. New Students

Up to this point, our discussion has centered around students continuing in the school. In many schools significant numbers of students move in or out of the attendance area during the year, especially during the summer. Several schools we visited have mobility rates of thirty percent and one school has a turnover rate of fifty percent of the student body during each year.

The placement procedure for these new students differs from the practices described above. The school usually lacks information on the academic standing of the new student. Typically, a student's record does not arrive until after the student has begun school. Hence, placement is not made on the usual articulation card criteria. Moreover, whether the new student arrives during the year or during the summer, the school's ongoing students are already in place. Not surprisingly, therefore, schools typically follow the practice of placing new students in classrooms with vacancies (usually created by children moving out of the area). Schools, however, can not easily predict which students will move away from the school in the summer when making classroom assignment in the spring. Moreover, in some instances, the mobility pattern in a school is uneven from year to year. Thus, during a given year a teacher might have an unusually large number of students move away. The new students often do not match the former students' characteristics. As a result, despite planning efforts, human mobility somewhat undermines the balance norm both over the summer and during the year. In one school, for example, a second grade teacher had a rash of girls move away and boys enter the school. By the end of the year, her class had a much larger proportion of boy students than normal.

Schools rarely undertake mid-year transfers of continuing students in order to rectify imbalances created by mobility. Nor, indeed, do they typically make start-of-year adjustments when imbalances (ability, behavior problems) caused by in-transfer, begin to be discovered that were earlier undetected. Instead, teachers generally wait out the year and reshuffle students in the spring sorting process. Of course, transfers are not the only source of imbalance. Last year's leaders and behavior problems may not be this year's. Throwing new groups of pupils in together and with a new teacher may create a new chemistry. The extent to which adjustments are made during the year is taken up in Part II.

B: Junior High Schools

The procedure for sorting junior high school students into their classes differs markedly from the process used in elementary schools. First, the task differs; because of staffing decisions, junior high schools typically must assign students, not to one teacher, but rather to five or six teachers -- one for each subject. Second, junior high schools do not fully embrace the balance norm favored in elementary schools; in some subjects students are grouped on the basis of ability. Third, the administration of the sorting process is not typically done by the principal and/or teachers, as in elementary schools, but rather by junior high school counselors.

1. Random Assignment With Some Tracking

The dominant norm in junior high school sorting is randomness. As we will explain, most assignments are made impersonally -- often by computer. Little attention is paid to teacher-student chemistry. When signing students up for classes, the bulk of the counselor's attention goes to enrolling students in their elective course (or two) and to ensuring that students are in the appropriate level of math and English (both to be discussed below). Even this modest amount of personal attention, as we will see, focuses on the course and not the teacher. Put differently, the way sorting is done in junior high means that counselors do not, and frequently can not, control either who will be the individual pupil's teachers or what courses he takes in which time period.

A related point is that the junior high school procedures are more bureaucratized than are the sorting procedures in the elementary school. The sorting process is divided into a number of separate stages, and different individuals are involved at each stage. As we shall see, counselors can not simply sit down one afternoon and make the classroom assignments for the whole student body.

The junior high schools we visited vary in size and structure, and, as with elementary schools, these affect sorting. Some are two year schools; other three. Some start with the seventh grade, others with sixth. The schools range in size from between four hundred and eight hundred students. In almost all the schools, students change classrooms and teachers each hour. In one school, however, the sixth and seventh grade students have an elementary school format with one teacher for the entire day, taking up the traditional junior high structure only in the eighth grade.

Seventh graders are typically required to enroll in English, math, social studies, language arts, physical education and one elective. Eight graders follow a similar course schedule, although with two electives. Some tracking of students by achievement takes place. For example, all of the schools group students in math -- usually in remedial, regular and accelerated math groups. All schools also offer remedial English for students who are considerably below grade level in achievement. Accelerated English classes are provided by some junior high schools, particularly for students in the mentally gifted minor (MGM) program. Although the proportion of junior high school students who are enrolled in each track varies with the composition of the school, in most cases the vast majority of students are in the regular English class and only a small number of students are in the "fast" and "slow" groups. Based upon our sample one would conclude that it is rare for there to be junior high ability grouping by classroom in areas other than math and English.

Counselors make placements in math and English tracks by drawing on a variety of factors: results of national tests, scores on district or school placement tests, elementary school teacher recommendations and the counselor's personal knowledge of the student. It does not appear that these criteria are overridden if that would be required to promote sex and race balance.

Counselors had difficulty stating precisely how they interweave the various criteria. Nonetheless, they note that the differing pieces of information usually re-enforce the choice of a certain placement. Hence, in the vast majority of cases, it is clear to the counselor which math or English level best reflects the student's performance to date.

Counselors report that parents occasionally call to complain about their child's math or English placement. One counselor we interviewed has a practice of honoring all these requests for the first semester in junior high, and then bases subsequent placements on the student's actual performance at the school. Most counselors do not have a rule for dealing with these occasional requests; rather they say they do what is in the best interest of the child. By implication they suggest they can discern that interest.

In addition to their required courses, students typically must choose one or two electives. The schools we saw offer around twenty electives ranging from foreign language to woodshop. The exact courses offered seem to depend largely on the talents, interests and equipment available to faculty. In most cases, students are enrolled in the elective of their choice. Sometimes, however, popular electives are limited to older students;

and in one school students wanting to take a foreign language must read at grade level in English. We were not able to collect information on the factors which inspire students to select particular electives. There are indications, however, that friendship networks (what are my friends taking?) and teacher reputations are among the things that influence student decisions.

2. The Process

For students already in junior high school, the sorting process begins in the spring with the counselors visiting the students during class time. Counselors discuss graduation requirements and describe the course offerings, especially the elective courses. Students are instructed to take home a course sign-up sheet and obtain parental approval of their program. Counselors report that they encourage students not only to inform their parents about required courses but also to discuss carefully their choice of elective. Typically, these sign-up sheets do not reveal to parents the child's math and English track, although in some schools parents are told this in other ways. Students are told to return the course sheet to the counselor by a certain date.

Thus, all schools seek parental participation in the elective selection process, and in the schools we visited, the official policy is that counselors and teachers are not supposed to accept a course sheet without parental signature. Nevertheless, schools do not recieve signed forms from all the students. In some schools approximately ten percent of the student body fails to return their forms; in other schools it is as high as forty-five percent. Often, students who fail to submit forms are students with problems in schools and continuing truancy. Ultimately, if a student fails to submit a form the counselor simply assigns the student to an available elective.

Forms in hand, counselors must make the actual assignments. Counselors usually begin this process by reviewing the distribution of student requests for elective courses. Classes which are oversubscribed must be pared down; many counselors pare down on a first-come, first-serve basis (something students are told about in the counselor's class visit). Other schools allow teachers to pare down the classes using their own criteria and judgment. In a few instances, the counselors eliminate students based on their knowledge of the students and the teacher's ability to handle discipline problems. A few counselors cope with oversubscribed courses by reviewing the second choice of students, and remove students from their first choice if they can be assigned to the elective of their second choice.

Knowing which courses students will take, how are they assigned to specific teachers? Usually a master schedule has been drawn up by the principal, which allots a number of sections to each course. The master schedule typically also assigns the sections to time periods and teachers to each section. It should be readily appreciated that subjects having one or few sections (both elective and the fast and slow tracks) create potential conflicts and are generally restricting. Counselors seek to minimize these conflicts by making changes in the master schedule if, say, too many students sign up for instrumental music who are also in MGM English and both were initially scheduled only once and for the same time of day. In some cases, however, electives must be changed.

Counselors sometimes remove for special treatment those students who have serious academic and discipline problems. They are individually assigned ("hand programmed") by the counselor to teachers and time periods which the counselor judges best for that sutdent. We do not know how common this practice is; in two schools we visited, counselors hand programmed approximately twenty students altogether out of a total enrollment of more than 400.

These problems out of the way, the actual assignment function these days is typically given over to computer personnel who do the detailed sorting in a pre-programmed manner. In the schools we visited, the dominant criteria employed by the computer program is random assignment. Thus, which teachers you get and when in the day you get each course is supposed to be largely a matter of chance. Students are not typically randomly assigned to a group and then with the group assigned to a package of teachers; rather there is even more shuffling as students are combined with a different set of classmates for each course. Although two of the seven schools we studied do not use computerized programming (in one school student labor spends one full day programming and in the other counselors do the work by hand) these too randomly make the actual assignments.

As might be expected this is not quite the end of the matter. For example, counselors inevitably discover errors; a student may be assigned two periods of physical education and no math at all. More importantly, a few counselors make program changes in order to honor parent and teacher requests. Most junior high schools do not seem to have many requests from parents. Counselors generally estimated that they receive fewer than five requests from parents each year. One exception we ran into is an unusual junior high school with high levels of parental participation in many matters and in which counselors program students in the presence of students. This school estimates that one in six families requests one or more specific teachers. Counselors say that they honor all parents' requests if feasible.

Teachers, on occasion, request to avoid a specific youngster. Counselors usually ask for a good reason, and if one is given (e.g., a bad experience with the child on the playground) will honor the request so long as it can be accommodated within class size limits. We do not have a full sense of the teacher-counselor dynamics here; that must await further research.

3. Notification

Schools vary in the way they notify students about their schedules. Most schools simply provide it on the first day of school. One school mails the student's schedule home prior to the opening of school. Once students have received their schedules, many want to change the courses, teacher and/or time periods to which they have been assigned. The reasons for these requests and the schools' responses are taken up in detail in Part II. As with elementary schools, new students are handled on a pragmatic fill-in basis as they arrive.

4. Incoming Students

Prior to closing our discussion of junior high sorting, we will note the slightly different procedure used for incoming (usually seventh grade) students. Counselors visit the feeder schools during the day and talk to the sixth grade students about course requirements, academic offerings and electives. They also provide general information about junior high school life (lockers, taking showers in physical education, school rules and other relevant information). Some counselors bring junior high students to these orientations and one school has a multi-media presentation. Moreover, in some schools meetings are held with parents. These will be discussed in Chapter 3.

C: High Schools

In some respects the high school sorting task is similar to that of junior high sorting; students must be assigned to five or six different courses with different time periods and teachers. And the procedures for signing students up for courses are very much a continuation of the patterns we described at the junior high school. High schools do vary from junior high schools here in a few respects, and we begin this section by briefly discussing these variations. The procedures by which high school students are matched with teachers and time periods however, vary significantly from the patterns we found in the junior high schools and these differences will be our main focus in this section.

Put broadly, the random assignment model that governs junior high schools is replaced by a model of student choice. In most of the high schools we studied students themselves are responsible for creating their class schedules.

1. Course Assignment

As we discussed above, junior high school course signups are held in the spring. High school counselors follow similar procedures: visiting classes, providing information on courses, distributing course request forms and having students return forms with parental approval. High school students, however, have many more electives and hence must make more and more significant choices.

Eleventh and twelfth graders have less than half of their schedule filled with required classes.

In the first year of high school, students are usually placed by counselors in English and math groups based upon past achievement levels. This continues the earlier pattern. In math, for example, freshmen high school students are often put in either remedial math (teaching basic mathematic skills), algebra or introduction to algebra (which prepares students for algebra and covers the one year algebra material in a two year period). Grouping is carried out by counselors based on student test scores, junior high school placements and junior high school teacher recommendations. Freshman students are rarely grouped in subjects other than math and English.

After these first math and English placements, however, counselors rarely assign students to tracked courses. Academic grouping does not cease, however; rather, it continues in different forms. For example, courses regulate entry by establishing pre-requisites. Geometry usually requires the completion of algebra, perhaps with a grade of C or better. Moreover, as freshmen academic grouping leads students to cover math materials of different breadth and depth and at different speeds, it affects dramatically the probability that students will enroll in advanced courses, including calculus and trigonometry. Schools with advanced English courses often also have pre-requisites for certain subsequent souped-up classes.

High schools also get de facto ability grouping as students select electives. College bound students, for example, choose courses required to meet university and state college entrance requirements. As seniors, for example, their schedules might include, government, physical education, trigonometry, college preparatory English and physics. In a school with a wide range of student ability and aspirations, it is likely that only two of these classes would contain a mixture of students whose academic abilities reflected those of the school as a whole. This is because students without college plans may well be taking government, physical education, English workshop, photography and work experience. Thus, it is not uncommon that high school students spend the majority of their classroom hours in reasonably homogenous academic ability groups.

Beyond this we learned that even subtler forces are at work that create further ability grouping. Here is an example. High school teachers usually prepare extensive course descriptions which are published in a course catalog. And although several sections of a single course, say biology, are offered, they may not have the same course requirements; perhaps one section will require more extensive reading and writing. In one school we visited this is the case. Students and teachers are aware of it, and as a result, the sections tend to attract differing types of students. One section attracts bright, interested college bound students, whereas the "easier" section contains less enthusiastic students and is plagued with discipline problems.

Theoretically, students draw on a number of resources in making course selections. Counselors and the information they provide, parental guidance, peer friendship networks, and teacher recommendations were cited by individuals as factors contributing to a student's course decision. Unfortunately, we were not really able to appraise the relative significance of these factors.

2. Class Selection -- Arena Scheduling

Unlike the junior highs, the majority of the high schools we visited do not use a computerized scheduling method to match student course lists with specific teachers. Instead, during the first days of school, students are allowed to choose for themselves the teachers and time slots they prefer. Districts call this procedure by different names which are used inter-changeably in this chapter, including "arena scheduling," "card pull," "walk-through," "self-scheduling," "scramble schedule," "run for your classes" and "mill-in." Some of the high schools have used this procedure for over a decade; others have adopted it in the last few years. We did find two schools, however, that had used arena scheduling for several years, but have recently adopted a computerized scheduling method.

Arena scheduling typically works like this. During the first day or two of school, students are processed through the gym or auditorium at designated times in small groups. Seniors are usually allowed to enter first. Within the auditorium, teachers (or other school representatives) sit holding cards for their respective classes. Students line up in front of teachers' tables and acquire a card for the class they desire. When students have filled up their course schedule, they turn their cards over to their counselor and leave the auditorium. Remember, the ostensible purpose of this is for students to pick teachers and time slots for a course list that has previously been determined.

At times, however, students are unable to get a card for a course on their program even though counselors have attempted to ensure that there are enough total class slots for all of those intending to enroll in each course. Hence course changes occur during the scheduling process. This most effects students entering the gymnasium relatively late in the day, and there is some indication that this last minute course change does not always work out too well.

One counselor described it in this way:

> The emphasis (in the scheduling arena) is "you got to schedule, you got to schedule, school starts tomorrow." Students make a lot of bad choices under these circumstances. A common scenario for these students is: "I can't get the U.S. history class I want this period. Oh well, what the hell, what is

> open? Let's see, drafting is open. I'll take drafting." Next week they come into the office stating: "I don't like drafting." We ask them, "Why did you take it?" They say, "There wasn't anything else open. I want a program change."

At other times, although a course is open, students are unable to get the class at the time they prefer or with the teacher of their choice. As a result these students too may enroll in another course. We were not able to gain a clear understanding of the frequency with which these course changes occur. Our sense is that at many schools the scheduling arena is often chaotic, with students wandering around attempting to find courses and not just teachers and time slots.

Most schools have consciously chosen the student choice format, in contrast to a computerized scheduling procedure, believing it has several advantages.

School officials state that the arena scheduling method usefully increases a student's control over his educational experience. By allowing students to select their teachers and time periods, administrators think that students will be happier and more satisfied with their classes. Hopefully, students will then work harder and thus benefit educationally from being enrolled in a class of their choice.

In addition, school administrators hope that this method, especially as it occurs right as school starts, reduces the number of individual program changes that otherwise would have to be processed at the beginning of and during the first part of the school year. These changes consume a great deal of a counselor's time and can be disruptive to teachers' classes. For similar bureaucratic reasons, arena scheduling appears especially attractive to schools with a high rate of student mobility. In schools where, for example, over one quarter of the student body is new to the district from one September to another, by having the students in effect process their own papers, the paperwork that would be required of counselors is substantially reduced.

Further, some school officials note that this scheduling method has the potential to stimuate improvement in teaching methods. It is widely recognized that students see some teachers' classes as much more desirable than others. When students enter the auditorium in groups, the lines in front of teachers' tables provide a visual statement as to students' assessment of the teaching staff. In particular, it is hoped that unpopular teachers will be encouraged to revise their teaching methods and some think this often happens. Finally, we sense that arena scheduling is also seen by some school administrators as a new and innovative procedure and thus a mark of modern school management.

Although some of the schools we visited have satisfactorily used this scheduling method for many years, it is clear that not all the claimed advantages of the system are being realized. Let us then consider the negatiave side.

3. Arena Scheduling Drawbacks

Students and teachers both complain that schools in the end don't provide students with very much choice. For example, most schools provide students with a choice of at most two teachers in several subjects. Structural features of the school's program, of course, affect the range of choice. First, students in smaller schools, naturally, tend to have fewer choices than do students in larger schools. School officials state that a school generally needs to have at least 1,200 students for this scheduling method to be effective. Indeed, the two schools we visited which had changed to a computerized scheduling method had done so, in part, due to declining enrollment.

Second, the way the school assigns teachers to classes has an important impact on the number of choices available. In some schools, it is common for one teacher to teach all of the sections for a course. For example, one teacher might give all the advanced freshman English classes, another teacher might give all the advanced sophomore English classes and so on. This means that although time slot choice may exist, teacher choice for such courses does not. This pattern contrasts markedly with schools that have a tradition of "sharing" classes with, say, each English teacher taking one remedial class, one advanced class and other classes.

The procedures used by high schools for making staff assignments differ from school to school. Some principals simply make teacher assignments; other principals solicit teacher requests and then make assignments; other principals delegate the task to the heads of departments; and we found principals who allow the staff to make the decisions within department meetings. Although we did not seriously explore the reasons which lead to these differing patterns, as with elementary schools, the principal's management style and educational philosophy appear to be critical. This is an area that would benefit from further research.

Although most of those who talked to us about this reported that their school has an equitable staffing pattern, there were occasional complaints of some teachers "hoarding" highly desirable class assignments. This seemed to mean that seniority is thought to be playing too large a role. In one school we were told that the "best" teachers are assigned to the accelerated classes.

One principal noted that when he came to the school there were too few remedial classes for students with learning problems and that none of the teachers were interested in teaching such a class. Ultimately, he was able to convince one teacher to take the class, and has gradually expanded the remedial program. The general point is that there are "supply side" problems and issues bearing on student scheduling as well; and to return to our main theme here, staff assignment practices importantly determine the number of teachers that students have to choose from in making up their program.

Yet another factor which influences and reduces the number of teacher and time slot choices available to students is the degree of fine tuning employed in ability grouping or, put more broadly, the number of "singletons" (courses offered only once during the day) in the curriculum. Schools with a highly differentiated curriculum program, other things equal, will have more course choices but fewer time and teacher choices for students. For example, a senior in a college preparatory program taking trigonometry, physics, advanced placement English, Spanish 4, government and physical education will probably only have a teacher and time preiod choice in the last two classes.

In sum, many simply do not believe that the arena scheduling process increases the students' control over their educational experiences. As one teacher stated:

> There aren't very many choices. If the student is an advanced student, there is only one advanced teacher for each grade level in English, math and other departments. If you are taking Algebra 1, you get Mr. Smith whether you want him or not.

> Really, it would be better just to mail out their programs to them because in reality the choices don't amount to anything anyway, other than the fact that they might be able to decide whether to take English third period or fifth period. You could do that with pre-enrolling; they could put down their preference.

For some students, of course, even the chance to avoid one teacher, to pick one class hour for a specific class and so on are important advantages of the scheme. This very success of choice, however, even if on a small scale, creates problems in some schools. For example, schools generally report an increase in discipline problems when groups of friends schedule their classes together. While this may be a small price in some places and a big benefit in the eyes of the students, in others schools discipline problems so dominate classroom time as to be of epidemic proportions. Teachers in one such school complained bitterly of the increased discipline problems brought on by the scheduling method. One teacher explained the problem in this fashion:

> One of the big problems with the scramble system is that they (students) . . . can all take a class at the same time. We have had a large number of friends n classes and we have got a lot of discipline problems through this. You see, you get five to six kids in your classroom that are "buddy-buddy." These students could have been split up. By the time we figure out that they are going to be a discipline problem it is too late and there is no place for them (due to class size loads). So we are pretty much stuck. As teachers, I don't think we have seen any advantages to this system. Not one. (Instead), I see one big drawback and that is that we get a lot of kids together . . . I have a group of cheerleaders third period that I have been threatening to kill all year.

By contrast, it is noteworthy that students we interviewed saw the ability to arrange classes with friends as a key advantage of the self-scheduling method. While students noted that they often are unable to avoid teachers they dislike or even to get into the classes they desire, they are often able to arrange to take a class with a friend or a group of friends.

A different sort of problem is that a number of students simply do not go through the arena scheduling process. (In the schools we visited, the number of students who failed to attend the arena scheduling ranges between 10-25% of the student body.) In some schools, students who miss a deadline for submitting course request forms are not permitted to go through the arena scheduling. In other cases, students simply extend their summer vacations or work an additional day. Students who do not go through the arena scheduling process are hand scheduled by their counselors during the first week of school and put in classes that still have room.

School officials report that the majority of the students who do not participate in the "scramble" are habitually truant, have academic difficulties in school or are behavior problems in the classroom. These high school students are the ones, it is said, who generally fail to become informed of deadlines and/or fail to comply with schoool regulations. As a result of their late enrollment, they end up with the "left-over" classes.

Many of these classes are known to have "lousy teachers" by the students. Of course, some students will be regularly truant and/or behavior problems even with the best of all possible teachers. Nonetheless, some feel that a method which dictates that late schedulers get the "left-overs" helps to perpetuate a lack of interest in schooling.

Yet another problem with arena scheduling is that teachers informally exercise control over the composition of their classes. As one counselor stated:

> Teachers tend to see arena scheduling as a good thing because they can turn down kids who they don't like. They see a kid coming with whom they have had problems in the past and they say, "Why don't you find somebody else this year?" Or, they will arbitrarily say, "Class is closed." The teachers love being able to do that.

In all of the schools we visited, it was reported that some teachers do in fact engage in this "quality control." Often, the principal does not condone it, but is aware that it takes place. In rare instances, counselors get students who are rebuffed from so many classes that they have difficulty building a schedule. While this informal feature increases teacher choice and may even be good for the students who are permitted into "selective" classes, there is little reason to conclude that those who are excluded in turn find places that are better for them.

The student choice system is also said by some to have a negative effect on certain teacher actions and staff dynamics. One school, for example, was in the midst of a bitter conflict over curriculum development and reform. A teacher we interviewed was convinced that the student choice scheduling method had exacerbated unpopular teachers' resentment towards other (more well liked) teachers and had led to efforts by older, unpopular teachers to gain control of curriculum and curtail the programs developed by other staff.

We received conflicting reports regarding the effect of student choice on teaching methods. Some people we interviewed felt that the scheduling method had made a positive impact on teaching performance. Others argued that the scheduling method had not influenced teachers' performance. They believe that unpopular teachers continue to rationalize the situation believing that students are uninterested in learning, want to be babied, and so on. In such cases, while the self-scheduling method provides a clear statement of the teacher's unpopularity, it does not inspire the teacher to revamp his or her teaching methods. Perhaps it is relevant that counselors report that there is little variation year after year as to which teachers' classes fill up quickly and which classes are still open after scheduling is complete.

Teachers and administrators also complain that many students' judgments regarding teachers are very unsophisticated. As one counselor stated:

> By and large, students' judgments are very immature and very much a 'here and now' orientation. They do not tend to look at the long run or what's best for me in terms of my life goals. Instead, common judgments are, 'my best friend in that class, I can't survive unless I'm in that class with my friend.' Or, 'teacher A is a really neat swinging guy, teacher B is the pits, he makes you study hard all the time.'

School personnel believe that many students evaluate classes based on the quantity of work the teacher assigns, rather than the quality of the materials and the teaching. Students are also aware of this pattern. Some admit that they often attempt to "get by," selecting classes with the least amount of work. Some older students expressed regret to us at not having applied themselves during their earlier high school years.

Finally, some school staff complain that the number of program changes has not diminished with the introduction of arena scheduling. In some places program changes continue to dominate counselors' time during the first few weeks of school. The actual number of students who make program changes varies among the schools visited. Several counselors estimate that over 50% of the student body would like to change at least one class after the school year is underway. In fact, less than twenty percent of the student body makes any changes in most schools, and in some schools very few made changes after the "mill-in."

In sum, the rather complicated arena scheduling procedure, although widely employed, is a reasonably controversial system.

4. Program Changes at the Outset of the Year

Although most high school students are registered for their full program when classes start, they don't always stay with that program. We look here at program changes that are made when the year begins. In Part II we consider, for all grades, the classroom changes that are made during the year because of friction between pupil and teacher. Some program changes occur right away because of what are, in effect, goofs in the initial scheduling process: some students are in the wrong section of courses that group by ability; some classes are intolerably large, and so on. Counselors try to rectify these mistakes promptly.

The other main reason for making an early program change is essentially that the student has changed his or her mind. Our sense is that if the student has now decided to participate in a work experience program or to attend a Regional Occupational Training program at another campus, this preference is readily accomodated. Beyond that, however, schools have differing policies for handling program change requests.

Some schools essentially permit students to transfer early out of any class for any reason, provided there is space available in the now preferred course or section (although often there is not). In other schools, counselors only readily permit students to transfer out of electives, during the first week. Some schools require parental permission to drop a college preparatory course; others require the teacher's permission to change out of a class.

Yet other counselors are quite strict about requests for program changes. They limit program changes to as few as possible and closely scrutinize the reasons offered for seeking a change; for example a student's dislike of a teacher, his dislike of a course or his desire to be with friends are typically insufficient reasons for a program change.

In such circumstances, however, it is clear that students frequently learn from the grapevine that it is to their advantage to give incomplete or made-up reasons as to why they desire a transfer. Several students report that although the real reason for the change is a dislike of the teacher or the wish to be with friends, in requesting the transfer they will give the counselor an academic reason (the material is too hard) or some other acceptable reason. These students are well aware that if they tell the counselor the "real" reason, they will not be able to make the program change. One student, for example, told us that she moved out of classes with teachers who were "disgusting." When asked what made a teacher disgusting, she stated: "You know, when a teacher is always clearing his throat, or there is this teacher who kind of snorts . . .". She went on to tell us that she usually told her counselor that the class was too hard for her, and that in the same way many of her friends arrange program changes for similar reasons. School staff state that less academically successful students are over-represented in the program changes.

Finally, and perhaps not surprisingly, it appears that there is substantial variation even within a school's counseling staff in terms of how "easy" it is to make a program change.

PART II

CHANGING TEACHERS AFTER THE SCHOOL YEAR BEGINS

A. Parent Initiated Changes

All of the schools we visited experience occasional requests from unhappy parents to remove their children from a teacher's classroom. These requests are relatively rare, and cases where children are actually removed from a classroom are even rarer. We found that elementary, junior high and high schools all tend to cope with these requests in an informal fashion. None of the schools has a written procedure for handling these cases; indeed, often there is not a clear series of steps to be followed. Although the parent, teacher, principal and counselor are usually all involved in discussing the problem, the exact order of conferences and participants varies. Nor do there seem to be real rules about when such changes will be made; rather these requests are generally evaluated in a case-by-case fashion.

We did note several common themes, however. First, most schools say they have very few cases in which parents seriously pursue a change of teacher. In many elementary schools, usually fewer than three children a year are changed for this reason. Although parent initiated teacher changes are more common in secondary schools, still many counselors say that fewer than ten parents in schools of 800 or more students induce such a change each year. Cases where parents raise, but do not successfully pursue this issue, while more common, are still relatively unusual. Thus, while school officials had a difficult time estimating for us the number of cases in which parents, at some point, say they desire a change of teacher, it appears that parents of less than five percent of the students raise the issue each school year.

Second, school officials respond to parental complaints by encouraging parents to talk to the teacher directly. Principals note that parents often complain that a teacher is too hard on or too strict with the child, and that these complaints are usually resolvable through increased communication between the parents and the teacher. While many principals simply refer the parent back to the teacher, several actively follow the complaint by arranging a parent-teacher conference, calling the teacher in for a discussion with the parent, setting up a parent-teacher-principal conference or calling the parent in a few days to see if the parent's complaint has been resolved. In short, in most cases the decision to remove a child from a teacher's class is made as a last step after all other efforts to resolve the problem have failed. As a result, parents can count on participating in several conferences before their request to move their child will be honored.

Third, principals seem to have their own sense of which complaints are "serious" and which are not, since a number of them emphasized the distinction to us. Serious complaints might include cases in which a teacher ridicules a child by calling him "stupid" or "dummy", or where a teacher tips over a child's desk or swears at a child. Non-serious complaints might include keeping a child in for recess, giving a child too much homework, keeping a child after school for detention (while a child, say, misses a music lesson) or making a child sit against a wall in the playground. Complaints that a teacher is too "easy" or not highly competent, independent of a discipline issue, are said by principals to be very rare.

It is not entirely clear to us, however, that the seriousness of the complaint importantly affects the outcome. This is because, among the principals we interviewed, we found quite differing stances toward parental requests for a change during the school year. Some are basically willing to grant a request if space permits. Although these principals usually suggest a parent-teacher conference, if the parent is still unhappy after the conference, the principal makes a classroom change. Other principals are not as easily persuaded that a transfer is necessary. They require extensive documentation of efforts to resolve the problem at hand before they consider a transfer. Many times they simply do not believe that a teacher transfer is the appropriate response to the problem. Differences here among principals often reflect differences in basic management styles.

Fourth, a principal's response to such parental requests seem to have important consequences for staff morale. Several teachers complained rather bitterly of principals who do not "back up his teachers" when faced with critical parents. These teachers argue that it is very important that a principal not support the "badmouthing" or "trashing" of teachers. Indeed, a principal's response to parental criticisms of the teaching staff is, for some teachers, an important indicator of the principal's general trustworthiness and reliability. Of course, many teachers say that a principal can "back them up" and still approve the removal of a child from their class so long as the manner in which the principal deals with the complaint is supportive.

In the end teacher changes arise out of a variety of special circumstances. For example, in some instances, it appears that the request of a change of teacher comes out of frustration and anger arising from the school's organizational features

-- e.g. limited paths of communication between the teacher and parent. Some parents are simply more determined than are others. Some schools are much more able than others to accomodate such requests because of their class size limits and classroom openings. All of these forces point toward the handling of parents' requests for transfers on an ad hoc basis. Indeed, school officials claim that each case is so different from the next next that there is no real issue of treating like cases alike and that it would be of no particular value to have routinized procedures.

Nevertheless, most school administrators did admit to us an instance in which a parental request for a transfer would very likely be granted: if a parent is absolutely adamant. Their view is that where a parent is so hostile to a teacher, this is not "beneficial for anyone: the student, the parent or the teachers". In such cases school officials fear that "you would be fighting it all year long" and that students might "act out" in class with implicit or explicit parental approval. Even here we found an exception, however; one principal absolutely refuses to move a child if she sees a parent as attempting to force her to move the child. All of this tells us that parents who know the "right" way to behave can probably work the system to their desired result -- so long as they are patient enough.

B. School Initiated Changes

We have looked so far at transfers requested by parents. However, school officials too occasionally request that a student be transferred during the year. Teacher initiated requests occur when a child is academically misplaced or when a serious teacher-student conflict develops. School officials do not allow teachers to transfer students simply to avoid those with discipline problems. This would upset the norm of sharing the behavioral problem load. Rather, the particular teacher-student relationship must have seriously deteriorated before a transfer is considered.

In some junior and senior high schools, teachers must obtain the principal or vice principal's approval before initiating a transfer. In other schools, teachers can simply speak with the student's counselor about the matter, and if the transfer is administratively feasible, then the counselor will process the papers and notify the student of the change.

Sometimes the teacher's freedom depends upon how far along in the term it is. For example, during the first three weeks of a high school year most schools readily allow teacher initiated transfers. As a result, a teacher who has a personality conflict with a student can approach a counselor and, providing space is available, arrange a transfer. Students are called in to be told of the transfer and parents are usually not notified.

Principals, vice principals and counselors too sometimes initiate the transfer of a student out of a class during the year. Sometimes a counselor realizes that a child is having difficulties with one teacher while doing satisfactory work in all of his other classes; this might lead to a transfer. Other times, a counselor might notice that one teacher is continually "on the back" of a particular child, and that the teacher had lost his or her objectivity in dealing with the student. In these cases too, the counselor might suggest a transfer.

Often, just as with parent-initiated transfers, school officials try to resolve teacher complaints without resorting to a transfer. Student-teacher conferences are frequently held which are mediated by a counselor or dean. The student and teacher are sometimes encouraged to "stick it out" for the remainder of the semester. Parents are often not directly involved in these teacher-transfer decisions proposed by school officials That is, students may be moved without formal parental notification, approval or participation in the decision. On the other hand, school officials say that since these transfers don't come up suddenly, in the usual case the parents do in fact know about the difficulty between student and teacher either though parent-teacher conferences or other previous communications.

PART III: PROMOTION AND RETENTION

Our discussion in this section focuses on policies regarding the annual promotion and retention of students in elementary schools. Our discussion does not extend to other grade levels for two key reasons. First, at present junior high and high schools rarely retain students. Professionals believe that retention is most effective very early in a child's school experience. Indeed, many educators believe that retentions in later years can be very damaging for a child's social development. Second, the criterion for completion of the secondary school level is reasonably well defined. Students must collect a sufficient number and type of units of credit to be graduated from junior high and high schools.
Until recently at least, the reality has been that students who manage to stick it out virtually always graduate from both junior and senior high along with their entering classmates. Of course, in many places academic failures become drop outs, and thus by this conduct are not promoted.

Of late, however, there has been a national wave of interest in competency testing and a revolt against the awarding of high school diplomas to students essentially for attending classes (or in some cases, perhaps, enrolling is the better word). As a result -- although community pressure to lower standards will be great -- we may soon see many high school seniors denied diplomas. The impact of this prospect on promotion and retention is not yet clear. One scenario imagines that students will pass from grade to grade as before, receiving remedial instruction along the way, and if they fail to qualify for the diploma they will receive an alternate certificate and be released. Another scenario imagines that the pressure created by tougher diploma requirements will translate into a substantial increase in retentions at various checkpoints lower down in the grade levels. Which, if either, will eventuate may depend in part on how willing community and school leaders are to expand upon current practices whereby many students nominally in higher grades in fact do work which, for the average student, is some grade levels below. In any case, these developments are too new to have been captured here and were not part of our study.

All of the elementary schools we visited regularly retain some children, having them repeat a grade level in order to acquire further skills. Relatively speaking, however, very few children are retained, and the retentions that do occur are concentrated in the primary grades. For example, we visited a number of elementary schools containing about five hundred students. In these schools, the number of children retained annually ranged from two to thirty-five. Schools in communities of lower socio-economic status tend to have a much larger number of retentions than do schools in more wealthy communities.

Throughout the schools we visited, something like three-quarters of the retentions are of kindergarteners, and nearly all the remainder are of students in first grade. In short, only on rare occasions do elementary schools retain students who are in the second through sixth grades.

Decisions to retain youngsters are seen by the schools as primarily within the realm of professional expertise. The selection of possible candidates for retention is made by the elementary school teacher. In many districts, a number of professionals review the proposed retention; frequently a school psychologist, a school nurse, the principal, and a resource teacher all discuss the proposed retention prior to the final decision. This careful review is prompted by a general concern about the uncertain effects of retention on the child's development. Many schol officials see retentions as an "educational gamble." Retentions are thought to have the potential of being highly beneficial to children. Retained youngsters can escape from their positions in the class as educational failures. Retaining a kindergartener can give a child an opportunity to mature, to develop academic skills and to create social relationships. The child, in short, can have a successful school experience in circumstances when a promotion might be disastrous. And officials think that a successful retention at that point can dramatically improve the chances that the child will have a good school experience in the remaining years of school.

Yet, not all retentions are successful. At times retention severely stigmatizes children; school officials are well aware of the potential for the ridicule of retained students. For this reason school officials strongly discourage retaining physiologically developed or socially mature youngsters. A child's height, for example, is sufficient to stop a proposed retention. School officials realize that students can be stigmatized by their former classmates ("Johnny flunked kindergarten, what a dummy!") as well as by children in the new class. ("Why are you still in kindergarten?") Neighborhood children, siblings and relatives can all make a child's life miserable.

A further risk is that retained youngsters will become highly resentful of the retention and become discipline problems in the class. Finally, for any number of reasons, the student may not learn any more material or mature significantly by repeating a grade. For these children, it might be much more beneficial to promote them and to add tutoring and other special aid during the next school year. Professionals say they try to weigh all of these factors in making a recommendation on a proposed retention.

Notwithstanding this careful professional evaluation, parents play a critical role in the decision. In all of the schools we visited, school staff stressed their belief that parental support of a retention is critical to its success. Simply put, although school personnel are never sure if a proposed retention will be a success, they are very clear that a parent who strongly objects to the proposed retention will ensure that the retention is a failure. Resistant parents may ridicule their own children, punish them for being inadequate, and/or blame school personnel for the retention all of which are likely to undermine future efforts of teachers to work with the child.

In every school we visited, therefore, parents are able to refuse to allow their children to be retained. (Indeed several school administrators believe that it is against state law to retain students against their parents' wishes. We could not confirm the existence of such a law.) Schools vary, however, in the efforts which teachers make to convince parents of the need for retention. In some schools, staff try hard to sell parents on the retention. In other schools, teachers merely raise the issue and explain the problem to parents. If parents are resistant, however, teachers are instructed to honor parental wishes and not to "invest themselves" in the idea of the retention. Some principals and teachers told us that their beliefs about retentions have changed through the years; for example, some principals who had in earlier days made a concerted effort to convince parents to cooperate with proposed retentions now take fewer steps in this area.

Although, as we noted, all of the districts allow parents to refuse a retention, there are variations in the ways the refusal occurs. Some of the districts have district level policies and district forms for retention. These forms require teachers to collect certain information, including for example, the age and academic status of the child's siblings. Some require identified school professionals to examine the file and make a recommendation on the form; in other districts, the input of a school psychologist is optional. Although these district forms provide schools with a series of steps to follow, district policy does not provide a set of criteria for weighing the various inputs and making a final decision regarding the retention.

In the districts we visited that have no district-wide policies, several schools have developed their own policy for retentions. In three cases, schools have a specific form which parents sign signifying their approval or rejection of the proposed retention. One school has even developed a rather specific list of criteria which are necessary (but not sufficient) for retaining a child.

Schools have differing timetables for dealing with proposed retentions. In about half of the schools, principals say that parents are to be informed of the possibility of retention by the fall grading period. This early warning is particularly common in schools where a large number of students are retained. Other schools notify parents later in the year, usually in March or April. Only on rare occasions are parents notified of a retention proposal after April. School administrators stress that parents are supposed to be informed of a child's progress in bi-annual conferences. Thus, in almost all cases where a retention is necessary, parents who have attended conferences are aware of the difficulties the child is having in the classroom before the retention notice is received.

Before closing our discussion of promotion, it is important to note two additional types of actions which impact on the promotion and retention process. First, parents with a preschool child who is exceptionally immature will occasionally keep the child out of school for an extra year. In short, they start kindergarten late by being "retained" at home. Sometimes these parents come to the school and consult with the principal and teachers before taking such action. Testing may be done of the child, or the school staff may simply visit with the parent and the child. Children who are physically immature and socially underdeveloped are likely candidates for this step. By holding a child out for an extra year, parents try to give him a chance to start school with children who are more genuinely his peers and thus to have a successful school experience. Had this child been enrolled in school, there is a possibility that he would have been subject to retention, and many believe that this is far worse than a delayed start.

Second, on occasion, retentions are so unsuccessful that they get "undone" in the following way. A teacher of, for example, a fifth grader who at some point has been retained notices that the student is socially mature, physically mature and making little academic progress. The teacher concludes that the student will receive more academic stimulation and will feel more at home in the junior high school than as a sixth grader. With the principal's and parents' permission, the student is "double promoted" up to the seventh grade. Although cases such as these are unusual, they do occur from time to time. In the normal course, however, a student who is retained continues forever in the year behind his agemates.

We were also interested to note that one district we visited has a policy that probihits retaining a child more than one time in his school career.

We did not carefully examine the process by which elementary schools accelerate very bright children, or for that matter the process by which high school students can complete their education in three years (or else enter college with substantial college credit). As to the former, however, our sense is that as mid-year classes seem to be less and less common, the possibility of "skipping" half a year is now very much reduced; in turn our sense is that rather few children today actually skip a whole grade. Rather, the brighest are sought to be reached through MGM programs.

PART IV: SCHOOL ASSIGNMENT AND TRANSFER

Up until this point, our discussion has focused on sorting practices inside of schools. In this Part we look at the practices of sorting students into differing schools. The discussion is organized around three issues. First, we describe the method by which students are assigned to a school. Second, we discuss the procedures for arranging a transfer to another school in the district (intra-district transfer). Third, the procedures for transferring to a school outside the district (inter-district transfer) are described.

Although we provide a reasonably complete picture of formal district procedures, this is not a full treatise on the issue of school assignment and transfer. That would require far more description and analysis than we can provide of the context in which sorting occurs. Thus, two school districts which have similar formal procedures for handling school transfers may have very different experiences with school transfers; we have in mind, for example, a small, homogenous school community with schools reputed to be of uniformly high quality as compared with a large, heterogenous school community facing imbalances in its schools in terms of both race and the level of school violence. In the latter school community, families and school officials are likely to care more about the transfer processes; transfer requests are more likely to be denied by the district; and schools are more likely to face the problem of students enrolling with false addresses. In short, school transfers are an "issue" in certain school communities and not in others. Yet we were not able to explore fully these context differences and their impact. Our discussion focuses on a description of district procedures.

A. School Assignment Procedures

All of the school districts we visited sorted students into schools primarily on the basis of residence. The concept is reasonably straightforward: school districts are divided into a number of attendance areas, and students living in an attendance area are assigned to the designated school site. The criteria for determining attendance boundaries is a more complicated matter, however. One clear norm here is to assign children to schools closest to home. Unusual topography or traffic dangers lead a district to assign some pupils to more distant but seemingly more safely reached schools. School enrollment capacities, together with growth or decline in the number of school children in a neighborhood, sometimes mean assignment to a more distant school. Some districts we visited that have ethnically heterogenous populations have recently redrawn the boundries of the attendance areas to further the goals of racial balance. In these districts too, although students are assigned on the basis of residence, they are not always assigned to the school closest to their residence. For example, in some districts, the attendance area boundary is less than one block from the school site, thereby directing students who live two blocks from a school to a site farther away. It turns out that none of the districts we visited has a large "school busing" program.

Parents learn of school assignments through either formal or informal methods. Parents who have just moved to the district or who have entering (e.g. kindergarten) students sometimes call the district office; given the home address, district personnel usually can identify the child's school from a simple map. Often parents simply ask a neighbor, friend or relative which school the neighborhood children attend. All of the school districts report receiving telephone calls from realtors and from families thinking about moving into the area. From this officials are confident that some families deliberately buy or rent housing by taking into account the reputation of the local school.

Parents formally enroll students in school by bringing the child to the school and completing an enrollment card. This card, which remains at the school throughout the child's stay, contains the child's name, birth date, home address, parental names, emergency phone numbers and so on. In some districts, school staff are instructed to verify the child's address and confirm that the address is indeed within the school's attendance area. For example, school staff in one district are instructed to obtain from the family two pieces of identification with the current address and, if the staff member does not recognize the address, to look up the address on a map. Quite apart from racial balance concerns, this pressure to verify place of residence has bureaucratic and staff morale justification. Put most generally, school districts are often eager that families not secure de facto intra-district transfers without going through the procedures described below. In fact, however, many new enrollments occur during a very hectic time period and school staff often find it impractical to carry out these checking procedures. For this reason some children simply wind up in the "wrong" school. Moreover, determined parents may be able to outfox the verification method. We will say more about the false address issue below.

B. Intra-district Transfers

In all of the districts, the great majority of students attend the school to which they are naturally assigned on the basis of residence. School districts do, however, permit students to transfer to other schools in the district. In fact, rather few students make such transfers. In most of the school districts we visited, fewer than five percent of the students are enrolled in a school on an intra-district transfer. In two districts we visited between five and ten percent of the student population is so registered.

We found two basic "paths" through which intra-district transfers occur. One path is on a space available basis. Under the concept of an open enrollment program, students are permitted to attend in any school in the district that has room for the student. In short, neighborhood children have preference, but more distant children are welcome. In this transfer path, the reason the family wants the child to attend elsewhere is irrelevant to the district.

We found this type of intra-district transfer in two of the districts we studied. In one, the schools determine the number of slots they have available for open enrollment (based on projected enrollment, mobility rate and staffing levels). In fact, receiving schools in this district have historically had little room. And, in 1979-80, less than 1% of the district's student population newly participated in the open enrollment program. District officials estimate that altogether about five percent of the school district population is involved in the program. When there is a surplus of applications, lotteries are held and students are randomly assigned to the open spaces. Students are also randomly assigned to a waiting list in the event that an opening occurs during the school year. In this district students are not required to renew their application each year; that is, once enrolled in the out of neighborhood school, the student may remain there.

In the other district, students are allowed to transfer only among the elementary schools since the district contains only one junior high and high school. Here between five and ten percent of the families of elementary school children request a school transfer. Due to a number of factors, this district has been able to honor all of the transfer requests which are filed by the spring deadline. Although parents are required to submit an annual transfer application in this district, ongoing approval is routine, and thus although neighborhood children presumably have preference over outsiders, this has never been tested or practiced. In both districts with open enrollment, parents are required to provide transportation to the out-of-neighborhood school selected. A third district we visited had a partial open enrollment plan for families living in certain sections of the community; its special circumstances will not be reviewed further here.

The second main path of school transfers involves a careful evaluation by school officials of the students' and parents' reasons for wanting the transfer. In this approach, school districts view school transfers as a method for meeting specialized needs of students. This approach to arranging transfers is the dominant method and exists in six of the seven districts we visited. We discovered that although these districts generally share similar criteria for evaluating requests, the hierarchy of authority and bureaucratic procedures varies among the districts.

Districts report using a blend of systematic and unsystematic criteria in evaluating transfer requests. On the one hand, district officials could clearly state reasons given by parents and students which routinely lead the district to approve the transfer request. For example, in all of the districts, plans to move into an attendance area, child care needs in elementary school (i.e., where the child's caretaker works), and medical or psychological needs of the child are considered legitimate bases for approving a transfer. Note generally that the acceptable reasons do not go to the relative quality of the schools. As with the assignment to teachers within a school, the system, for understandable reasons, adopts a formal posture that all of the schools are equally good.

Districts are also clear about some unacceptable reasons for seeking a transfer. These include beliefs about the quality of athletic programs, parental convenience, parental concern regarding racial balance and other types of "mere preference."

On the other hand, school personnel state that many of the intra-district transfer requests do not fall into these "easy" categories. Parents and students often request transfers due to complex sets of reasons. Parents, for example, request transfers to allow the child to assist the parent in caring for the family, to have the child take care of sick relatives and to allow the parents to work a particular schedule. School officials generally categorize these cases as "special circumstances" or "individual hardship cases". Insisting that it is impossible to develop a list of systematic criteria by which to evaluate these sorts of requests, school say they handle these transfer requests on an individual basis by examining in detail the factors leading families to make the transfer request. Plainly school officials have a hard task in some individual cases if the outcome is to turn on their distinguishing between whether the reason given is more like special child care needs or more like parental convenience.

The procedures used in processing transfer requests varies. In some districts, this task of evaluation is assigned to the local school level. Parents interested in arranging a transfer must speak with and get the approval of the principals at both the sending and receiving schools. Indeed, in such districts the transfer process often remains informal and is carried out by verbal communication between the parents and the principals. In such cases we are relying heavily on what the principals say are the criteria they use.

In other districts, parents file a written application which is reviewed by a district committee. These committees were found in two districts; they are composed of district administrators and representatives from elementary, junior high and high schools. In one district, parents are encouraged to make in-person presentations before the committee.

As noted above, districts do not receive a great number of transfer requests. Indeed districts which delegate the transfer procedures to the local school level often do not even have formal statistics regarding the number of transfers. Individuals we interviewed estimate that less than one percent of the children make school transfers each year. Districts keeping statistics on approved transfers say that one or two percent of the student body transfers each year. Of course, given the narrowness of acceptable reasons, it is not especially surprising that few make official transfer requests.

In fact, only two districts of those we studied appeared to deny a significant number of formal transfer applications. Both of these districts are in heterogenous communities and face problems of uneven distributions of students of differing racial backgrounds. In one of these districts, approximately twenty percent of the transfer applications are denied; in another district as many as forty-five percent of the applications filed are turned down. Both of the districts which deny a significant proportion of the applications have centralized the intra-district transfer procedures in a district committee. Some individuals we interviewed believe that if districts are to deny a fair number of school transfer applications, the task must be removed from local principals and centralized in the district office. They claim that principals are under great pressure to approve transfer applications (otherwise they are left with a disgruntled family they've turned down) and that it is easier for a district commmittee to be "tough" in this area.

Parents whose transfer applications are denied are generally allowed to appeal the decision. Two districts have a formal appeal process, with specific individuals designated to review the cases. In other districts, the appeal process is informal. Usually the review is carried out by the administration; in rare instances appeals have been taken to the Board of Education. In the one district we found that maintained statistics on appeals, approximately 40 percent of parents who were denied originally made appeals and 15 percent of the appealed cases were overturned in the parents' favor.

One way to "beat" the school assignment system is to move. We assume that many families actually do move because of unhappiness with the local public schools --

although we did not seek to document or measure this phenomenon in this study. Another form of self-help, of course, is to send children to private schools. More relevant for our purposes here, however, is the strategy of pretending to move. This is the false address problem that some public school districts face. Families might assert that their child is actually residing with a relative or friend whose address will gain the child access to the desired school. Since actually moving in with such a caretaker generally would give the child the right to enroll in the target school, districts confront the difficulty of separating out real from fake change of residences. Another family stragety is simply to pick out any address in the desired attendance zone and assert that the family lives there. Although the use of false addresses does not seem to be a widespread pehnomenon, it does occur and school officials know it. Attitudes toward it differ, however, sometimes from school to school and between local and central officials in the same district. To the extent that it is used to undo racial balance efforts, school officials are plainly concerned. On the other hand the use of false addresses to secure access to a school that the family very much prefers on educational grounds is something else. A local principal may well not be eager to kick out someone whose family went to so much trouble getting him in, especially if the student is not disruptive and there is room in the school. On the other hand district officials may well be worried about both notions of equal treatment and the undermining of the formal transfer scheme with its presumption of equal school quality. Indeed, even some local principals feel strongly that the rules must be enforced even if it means they lose desired students.

While our research satisfies us that some of this false address giving goes on, we are not at all confident that we have a full picture of it. Thus, we should probably not speculate further and should leave this issue to further study.

C. Inter-district Transfers

In the districts we studied, we found that inter-district transfers follow rather closely the second path of intra-district transfer decisions above. District officials generally believe that inter-district transfers should be reserved solely for students with special needs which necessitate that they attend a school outside the district boundaries. Although very few students and parents make formal applications for these transfers, it appears from the three districts we found with formal data that about three quarters of the applicants are in fact ultimately approved. We notice four variations between inter-district and intra-district transfers.

First, the procedures vary. Families interested in securing an inter-district transfer must make an application in two districts. The districts function independently, and permission to enter from one district is not enough to facilitate the sending district's "release" of a student. Moreover, since two governmental entities are involved, different values may be brought to the decision process. In several districts, however, the individuals responsible for granting a "release" are also responsible for approving intra-district transfers. Indeed, school district committees often consider inter-district transfer applications at the same time as they review applications to transfer within the district.

A second variation betwen intra- and inter-district transfers is in the criteria for approval. For example, although the family's plan to move into another district is universally accepted as a basis for an inter-district transfer, parent work location is not an acceptable reason in all districts. So too child care needs seem to be less acceptable as a basis for inter-district transfer than for intra-district transfer, although sometimes child care needs do suffice for out-of-district placements. School officials occasionally approve (indeed, recommend) an intra-district transfer for students with educational problems. By placing these students in a new environment, it is hoped that the student will be able to make a fresh start in school. None of the districts we visited, however, see this as an acceptable basis for an inter-district transfer.

As in the case of intra-district transfers, school administrators say that it is impossible to have an exhaustive list of criteria. Given the complex circumstances in many of the transfer requests, school officials believe that cases must be handled on an individual ad hoc basis.

Third, the appeal process for inter-district transfers differs significantly from intra-district transfers. As we described above, intra-district appeals are generally disposed of at the superintendent's office or the local Board of Education. Individuals wishing inter-district transfers, although they must exhaust their intra-district remedies, can ultimately appeal to the County Board of Education. Most districts report that less than five appeals per year go to the County Board of Education. Indeed, many districts have experienced no recent appeals in this area.

Finally, inter-district transfers have financial ramifications not contained within intra-district transfers. Some of the districts we visited exchange funds for students when inter-district transfers occur; a sending school district will pay the receiving district the cost of educating the child. Other times, the districts themselves do not exchange funds; instead the receiving school district receives the state monies for educating the child that otherwise would go to the sending district. Other districts strongly prefer to have a net of zero with other districts so that students are effectively swapped.

One district reported that recent changes in the state's school finance structure have led to reforms in the inter-district transfer policy. This school district traditionally allowed students to attend nearby schools which are in another school district. School principals, responsible for approving the release of students from the district, freely permitted students to make such inter-district transfers. As the bulk of school financing shifted from local taxes to state funds tied to head count, the district's financial interest in enrollment patterns changed. District officials noticed that inter-district transfers could be more costly than before. As a result of this financial pressure, the district has revised the inter-district transfer policy by shifting the authority for granting transfers to the district office where administrators are closely monitoring the transfer requests. Thus for example, an elementary school that used to allow more than twenty students to attend a school outside the district, finds that now the number of transfers granted has been substantially reduced.

PART V: FIELD METHODS

This research was conducted in seven school districts primarily during the spring of 1980. From the start we hoped to achieve a variation in the size and population composition among the districts studied. In addition, we decided that while it would be fine if the majority of the school districts were drawn from the San Francisco Bay Area, at least one or two districts should be in another area of California.

In selecting school districts, we relied on the judgment and recommendations of collegues in the educational community. In a few instances, we were unable to obtain access to communities recommended for study. At times, schools officials were reluctant to participate in the study due to the timing of the proposed interviews; they would occur at a very hectic time of year for teachers and school administrators. In addition, one superintendent was unwilling to participate due to the connections of some of us with the "voucher initiative." We should also report that several school administrators who did participate were convinced that this research project was somehow connected with the voucher proposal, despite numerous statements to the contrary.

Of the seven districts studied, five are located in the Bay Area and two in the Los Angeles area. The districts do vary in size, racial balance and socio-economic status of the school community. At the conclusion of this Part, a brief summary of each of the districts is provided. The seven districts had approximate enrollment in 1980 as follows: 2,000, 6,000, 6,500, 12,000, 14,000, 35,000 and 50,000.

In each of the school districts, interviews were conducted in four schools: two elementary schools, one junior high school and one high school. In addition, interviews were conducted in the district office. Here, the individual responsible for overseeing intra-district transfers and inter-district transfers were interviewed. In many districts, this was the Director of Pupil Personnel or the Child Welfare and Attendance Supervisor.

When contacting the district, we usually spoke with the Superintendent or a Deputy Superintendent. These individuals were told that the research project intended to describe the processes through which students are sorted into schools and classes in their district. District officials were told that a particular concern was to describe the amount of information which schools disclosed to parents in these areas. (This matter is taken up in Chapter 3.) In all of the districts, a school official recommended the schools for study. Generally, the districts appear to have selected their top rated schools for investigation. In a few cases district officials contacted the school principals and arranged the interviews; in most of the districts, we contacted the principals and arranged the interviews.

Within the elementary schools, we attempted to interview the principal and at least one teacher. In addition, we asked school personnel for the names of a few parents and conducted phone interviews with them in the evenings. At the junior high and high schools, we sought interviews with the principal, a teacher, a counselor and two students. In some of the schools, we talked with parents as well.

It was not always possible to interview all of the individuals we hoped to see. In particular, it was difficult to secure interviews with as many teachers as we would have liked. We visited schools during the day while class was in session. In some of the secondary schools we were able to interview teachers during their conference period. Other times, we caught teachers before school, after school or with phone interviews. In a few instances, the principal or vice-principal took over a teacher's class and released the teacher for an interview.

The interviews were semi-structured with open ended questions asked. The interview lasted about an hour. Usually we visited a school for a morning or two, chatting with the principal, a counselor, a teacher and (in junior and senior high) a few students. Interviews were taped, and respondents were told that the name of the district would be used in the report. Nevertheless, they were told that we would try to conceal the respondent's own name and specific information about a named school.

At the conclusion of the interviews, the field investigator prepared a field report summarizing the results of the research. Materials collected from the schools are included in the report, particularly regarding information disclosure.

These reports were then submitted to the target school districts for comments and criticisms. In several of the districts, school officials had only slight corrections. These officials, in short, felt our reports were accurate. On one occasion, school personnel had a different perception of an issue than presented in the field report, but acknowledged that these differences were to be expected. Some districts had more extensive complaints about the field reports. In these cases, the reports were usually revised and submitted once again to the school officials for a second review. The completed field reports for each district are contained in Appendix A.

Given the number of schools and school districts visited, we do not claim that the patterns described in Chapters 2 and 3 are necessarily a representative picture of sorting procedures in California schools. And we want to emphasize again that at the elementary school level, sorting practices differed enormously within district boundaries. Nonetheless, we remain confident that we have captured both a general sense of public school sorting and of the variety of that sorting.

There are some aspects of the sorting process, it should be clear, that we did not examine. They largely have to do with "exceptional children" of one sort or another -- the special treatment afforded the mentally and physically handicapped, the non-English speaking and the expelled disciplinary problem children are obvious examples. These children have already been the subject of various other intensive examinations. Rather, our focus has been on what might be best called routine sorting, or sorting of ordinary and mainstream pupils.

There follows some more detailed information about the districts studied.

DISTRICT A

Distrist A is a small district located east of San Francisco. It consists of three elementary schools, a middle school and a high school. In 1980 total kindergarten to twelfth grade enrollment for the district was two thousand one hundred sixty-four. Nine hundred sixty-six students were enrolled in the elementary schools. Four hundred eighty students were enrolled in the Middle School offering grades sixth, seventh, and eighth. The six hundred seventeen students enrolled in the High School attend grades ninth through twelfth. District enrollment included about two hundred students, or 10% of the population, who transfered in from other school districts. Fifty-five of those students were enrolled in the Middle School, ninty-five in the High School, and the remainder were distributed among the elementary schools. One unusual feature of this district is that it contains a large scale married student housing development for students attending a nearby university; many of these students with children are not Americans but rather are foreign students temporarily studying here. This creates ethnic diversity in the district.

DISTRICT B

District B is a small community located in the esatern end of the San Fernando Valley in Los Angeles County. The school district enrolls approximately 12,000 students. There are two high schools, four junior high (7,8), twelve elementary schools and one continuation high school. Approximately 55% of the students are of Spanish Surname, 10% are Caucasian and 5% are from other racial groups. Many schools in the district experience a relatively high mobility rate; one school had a turnover of 50% per year. Within the district some neighborhoods have undergone marked changes in the last decade, with white middle class families leaving the area. These neighborhoods have been filled with Spanish Surname families, many of whom have low incomes. Indeed, the majority of students in the district are on the reduced cost school lunch program; in some schools as many as 85% of the children qualify for the program

DISTRICT C

District C is located in the far eastern section of Los Angeles County. Enrollment in 1979-1980 was 5,958. The district has one four-year high school, a two-year junior high school, seven elementary schools, a school for the orthopedically handicapped, and a continuation high school. The district is predominantly white (80% white, 8% black, 8% Hispanic and 4% Asian). The district is located in a university community. The community is composed predominatly of middle and upper-middle class families. Indeed, in one elementary school, 80% of the parents were reported to work in education in one fashion or another. Districtwide, only about 4% of the children are enrolled in the reduced cost lunch program.

In earlier days, District C was a small town, beyond the outskirts of the Los Angeles metropolitan area. In recent decades however, Los Angeles has grown out to meet District C, and District C's population itself has grown. A new series of housing developments in the northeastern area of town, has greatly increased school enrollment in parts of the district. Despite this growth, persons we interviewed frequently referred to District C as a close-knit community where people perceive the school as one imagines they do in a small town. Traditionally the district has had very high levels of parental participation in school affairs. Recent years have seen community protest and mobilization over school board policies.

DISTRICT D

District D has an enrollment of approximately 6,500 students. The school district is located on the Eastern side of the San Francisco bay area. The district has two high schools, two junior high schools (seventh and eighth grades), nine elementary schools (kindergarten through sixth grades), a children's center and two continuation schools (one for seventh to eighth grades and one for ninth through twelfth grades). The District D has been experiencing declining enrollments in recent years and recently redrew the attendance areas for some of the schools. Its minority student enrollment proportion is modest but growing.

DISTRICT E

District E is located approximately 50 miles north of San Francisco. It enrolls approximately 14,500 students and has been growing in attendance in recent years. The school district is approximately 50% minority, with blacks and Filipinos constituting the largest minority groups. There are two comprehensive high schools and one continuation high school in District E. At the junior high school level, there are four junior high schools and three small alternative junior high programs. There are fifteen elementary schools and a limited number of year-round elementary schools.

In recent years District E has experienced some rezoning of attendance areas. A districtwide committee explicitly addressed attendance zones in light of the district's racial balance. This redrawing of attendance areas was met with controversy and community protest.

DISTRICT F

District F is located approximately forty miles northeast of San Francisco. The school district enrolled approximately 35,500 students during the 1979-1980 school year and anticipated 32,600 for the 1980-81 school year. The communities in this area are largely suburban middle class communities with a large percentage of white collar workers. A recent survey revealed that districtwide only 6.2% of the students were on AFDC and 13% of the students on the reduced cost school lunch program. At the time we visited, the school district contained seven high schools and one continuation high school. At the junior high level, there were nine two year "intermediate" schools. Thirty-four elementary schools containing kindergarten through sixth grade students were in operation.

A key problem facing the district has been the reduction of school age population. In approximately fifteen years, the district's enrollment has dropped from about 50,000 student to 35,000 students. In the spring of 1980, the district undertook a series of school closures; one high school, one junior high school and six elementary schools were closed. These school closures were met with community protest. The schools closures reverberated through the district in numerous ways, and influenced the procedures for student placement and transfer.

DISTRICT G

District G is located on the eastern side of the San Francisco Bay Area. During the 1979-80 school year, the district enrolled about 50,000 students within sixty-two elementary schools, seventeen junior high schools and middle schools, and eleven high schools. In recent year, District G has been faced with declining enrollment and shifting racial balances. Approximately sixteen years ago, the district enrolled 64,000 students. The last five years, district enrollment has dropped from approximately 54,000 to the current level of 50,000. The percentage of white students in the schools has been steadily dropping down to the current level of less than 18% whites, with black students constituting the largest racial ethnic group with 63% of the district population.

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CHAPTER 3

DISCLOSURE OF SORTING PRACTICES: EVIDENCE FROM FIELD RESEARCH

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CHAPTER 3

DISCLOSURE OF SORTING PRACTICES: EVIDENCE FROM FIELD RESEARCH

In the previous chapter we discussed California school sorting parctices as we found them in our field research. How much do California families know about these practices? This project, after all, is concerned with the impact of disclosure on school sorting. We initially imagined that public schools do not have a substantial and systematic outreach program designed to inform either parents or community leaders about school sorting in the district. In the course of our field work, therefore, we set about trying to substantiate or discredit our supposition. As we report in this chapter, our inquiries and the ready admissions of school officials have confirmed the hypothesis. This does not, of course, mean either that (1) school sorting practices are secret, or that (2) a disclosure campaign would be a good thing. The second point will be addressed in the analysis chapters that follow; the former will be considered here. That is, school officials regularly do reveal their sorting practices in various ways, and this chapter is devoted to our account of the scope and nature of that disclosure. At many points in this chapter we will note the absence of disclosure of various matters. Once again we emphasize that this is not meant as a criticism or as a suggestion that the items should be disclosed. Often school officials gave us what they consider to be good reasons for non-disclosure. We will consider the policy issues in later chapters.

For the most part we will follow a format that parallels the outline of Chapter 2, taking up assignment to teacher, changing teachers during the year, promotion and retention, and assignment to school and school transfers in that order. We close the chapter with a brief description of the way districts now respond to certain existing state-imposed disclosure requirements.

I: ASSIGNMENT TO TEACHER

A. Assignment to Teacher in Elementary Schools: Disclosure of Information

Schools employ two central methods for regularly disclosing information to elementary school parents. First, they provide written information in the form of letters and/or a school bulletin, newsletter or the like. This information is sometimes mailed home and sometimes sent home with students. Second, elementary schools typically hold parent-teacher conferences twice a year.

Among the elementary schools we visited, there is considerable variation in the amount and sort of information generally disclosed to parents about school sorting. Most schools start by providing to parents of entering kindergarten students a short pamphlet discussing the transition between home and kindergarten. These do not, however, explain anything about why a child will attend a specific school or have a specific teacher, let alone inform parents about choices they may have in the matter. Several schools then distribute handbooks to all families, either by mail or through the students. These handbooks, while by no means identical, typically do not discuss school sorting as we have described it. The handbook commonly will contain a principal's letter of introduction, the names of the teachers and school staff, information regarding school lunches, bus routes and emergency procedures and an invitation to visit the school and to work closely with the teachers.

Some handbooks are more comprehensive, however. One elementary school's handbook, for example, includes a discussion of testing, curriculum policy, retention, discipline policy and school rules. Thus, although neither teacher assignment criteria and procedures nor opportunities to change teachers are disclosed, some school sorting matters are explained.

This does not exhaust school-family written communication about sorting. For example, we found elementary schools in two of the seven districts we visited that have a tradition of annually notifying parents that school assignment will be taking place in the near future. At the same time parents are asked to provide input to the school about what they think is the best educational placement for their child. Generally, this disclosure and request is made in the regular school newsletter or bulletin. Samples are set out below. Parents are usually expected to phone the school, to send in their response, or to talk with the teacher at the regular in-person conference.

Most schools announce that they prefer that parents only indicate an educational setting which they think is best for their child. In fact, most parents who do respond simply submit a teacher's name. One principal does insist that parents who do request teachers provide the names of two preferred teachers for their children. None of the schools promise parents that these requests will be honored; rather, as we discussed in Chapter 2, schools typically include a statement to the effect that the parent's input will be considered along with other factors. The schools typically do not explain what those additional factors are, how they are weighed, or who does the weighing.

The schools which formally solicit parents' input regarding class assignments do not provide supplementary, substantive, written information on this topic. They do not, for example, give information about the educational philosophies or teaching styles of the members of the staff; nor do they disclose either the general popularity of the various teaches or the special talents or

SYCAMORE SCHOOL
225 West Eighth Street

May, 1980

Dear Parents:

The Sycamore staff is beginning to consider class placement for next year. Since we are in the beginning stages, there are many aspects that cannot be solidified at this point. Even without complete data, we would like your input as in the past, as to your rationale for teacher preference for your child. You are encouraged to stay with your present teacher if the grade placement of your child is compatible with the teaching assignment of his/her teacher next year. Because your first suggestion may not be feasible, please give very careful thought to your second and third alternatives. By combining staff and parent input together we hope to have the best possible classroom assignment for your child. In addition to parent request, final class assignments are based primarily on the following criteria: staff judgement, teacher-pupil relationship, peer relationship, and number in class. Final assignments will take place in September when all variables are known.

We would also like to encourage classroom visitations. Please make arrangements through the Sycamore office at least one day in advance of your visit.

Your child's name______________________________ Grade Level (next year)________

Rationale:____

____

____

____

Suggested teacher preference:

1.______________________________

2.______________________________

3.______________________________

PLEASE RETURN BY MAY 15 TO THE SYCAMORE OFFICE.

____
Parent's signature

____
Date

May 18, 1976

BULLETIN **BULLETIN** **BULLETIN**

TO: ALL PARENTS
FROM:

As indicated in my last notice, I will try to keep you up to date on what is occurring at and within the District at present.

• • •

FALL PLACEMENT - Last year we took parent input as to what type of program you wanted for your youngster for the fall. As you attend your conferences, please feel free to let your child's current teacher know about particular needs you feel would be important for your child. We will consider that information along with class balance, grouping for instruction and teacher style. We will make the best match-up we can. I want very much to get those assignments done prior to the end of school. As I indicated before, we have just started an investigation of a boundary change that might include more children. The outcome of that study could alter fall plans. At the present, however, I am proceeding with known facts. Current plans call for two classes at each grade level with the exception of kindergarten and first grade. At those two levels we are entitled to three teachers. Contrary to rumor we are not firmed up on anything, although we are strongly considering setting up three K-1 combinations rather than one kindergarten, one first grade and one combination kindergarten-first grade. If we do that, we would probably put the kindergarteners on an early slip-schedule with all of them coming early and going home at 11:20 A.M. All first graders would come late (9:30 A.M.) and go home at 2:40 P.M. That type of schedule has several advantages. It gives time alone to both groups. It provides a time from 11:20 A.M. to 2:40 P.M. for the first graders at a fifteen to one ratio of pupils to teacher. It allows for equal balance of classes throughout the year as new children leave or enter because of the three class choice. Please note that this is one idea under consideration. We have had k-1 combinations before and they worked out quite nicely. Many schools have had that type of combination with similar results.

April 26, 1977

BULLETIN **BULLETIN** **BULLETIN**

TO: All Parents
FROM:
RE: Current items of interest

• • •

⑤ Fall Placement for Students - As in the past we will take parent input in the form of a note stating the special needs of your child that you feel need consideration when placement occurs. Please keep in mind that many other factors will also be considered, such as, numbers, boy-girl balance, separation of certain children, and the overall make-up of the class. This type of parent input can occur at the conference or may be sent to this year's teacher.

competencies of the teachers. Parents who do request certain teachers, therefore, usually base their preference on previous experience with the teacher or information from informal networks (word of mouth). As explained in Chater 2, relatively few families now take advantage of the opportunities presented to make a teacher request.

As we saw in Chapter 2, elementary schools in fact accept requests for teachers whether or not they formally solicit requests. And although most of those non-soliciting schools receive very few requests, a few receive a significant number. For example, in one elementary school we visited the teachers in the grade level we spoke to tend to receive requests from approximately one-quarter of the children's parents even though there is no published information provided to families. Parents who make these requests seem to find out about teachers through informal networks such as the neighborhood, relatives, PTA meetings, Little League games, swimming lessons, and the like. In all of the schools we visited, our informants suggested that parents who make teacher requests are generally more active in the school than is the average parent. Plainly parental school participation provides a better opportunity to get to know the teachers, to observe their instructional methods and to decide who is better for one's child.

We also note that most schools are quite informal in the way they receive parent requests for teachers. Put differently, although we found one vice-principal who keeps a file box in her office where she records each request, and although we uncovered a school which has routinized the process through the use of forms which are handled in established ways, these seemed exceptional. More typically, it appears a variety of school officials receive requests, make notes, and in various ways direct the requests to those in the school who make the teacher assignment decisions. This informal method of coping with requests poses a problem for conducting further systematic research on this topic. For example, none of the principals we visited could provide a precise accounting of the number of parental requests received at the school in recent years. Indeed, where teacher assignment processes are decentralized, principals were frequently unaware, even in a general way, of the number of requests the teachers received. As a result, the information we provide in Chapter 2 must be taken as an estimate. Generating a more precise figure would probably require far more interviews as well as observations of informal settings.

Twice yearly parent-teacher conferences are routine in the elementary schools we visited. We did learn that the spring conference is often viewed as a good setting for the discussion of the child's educational future, including in some cases, the specific details of his next year's placement. What actually transpires in these conferences, however, is beyond our research effort here. There appear to be no formal directives to teachers to cover specific items; rather, schools seem to have informal norms about these conferences. It would be surprising if teacher style, values, power in the local school, and personal relationships with parents and children did not influence what happens generally in the conference as well as specifically as to, say, parental preference as to next year's teacher. Thus, the conference is perhaps a fertile place for inquiry into informal information dissemination; it will have to await subsequent research.

From our field work we do believe that the parental show-up rate for such conferences varies from school to school and that schools must make quite differing efforts to get parents to come in.

B. Assignment of Teacher in Junior High Schools: Disclosure of Information

As explained in Chapter 2, junior high families typically first formally receive information from the school in the spring prior to the child's entry into junior high. The usual pattern is for counselors to visit the students in their elementary school. We found two junior high schools, however, that hold night meetings with incoming sixth grade parents. Approximately 50% of all of incoming families attend the meetings. At these meetings, the principal and counselors give general information about junior high school as well as specific information regarding academic programs. Two other schools we visited provide incoming students with a folder (to hold papers), which summarizes school rules and regulations. Finally, we found one junior high school that holds individual daytime conferences between a counselor and the incoming student and his parent(s). Parents pick up their sixth grader at school during the day and drive over to the junior high for the meeting. At the the conference, counselors explain the course offerings, make a math and English placement, and enroll the student in an elective. Night meetings are available for working parents. The school claims that turnout for these meetings is extremely high.

At the junior highs we visited, students in all grades are instructed to share the school's list of course offerings with their parents and to secure parental approval of their course program. Often there is no description of the electives beyond the course name. We cannot estimate the number of students who do in fact have real discussions of curriculum options with their parents; we do know that in some schools a large number of students never file parental-approved course lists.

The written information provided to junior high school families does not generally disclose the typical random method by which students are assigned to teachers, the criteria for assigning students to classes of differing academic levels or the educational qualifications and philosophies of the teaching staff. Indeed, it is by no means chear that all schools actually inform parents to which English and math track their child is assigned. We did find one junior high school that provides a statement setting out the factors taken into account in student placement and combines this with a meeting with the parent of every incoming seventh grader. A sample of such a statement is attached; note that it does not disclose how the placement criteria are weighed or who does the weighing.

In sum, although some of the junior high schools we visited share general information about the school with parents the basic approach of the schools is to tell students and the families that when they want or need to know something about the school, they should ask the student's counselor. Students are certainly aware of this, and do make regular use of counselors for various needs. Thus, we conclude that junior high schools primarily view their informational role with respect to sorting as one of responding to individual requests. Not surprisingly, school officials confirm that both students and parents are generally uninformed regarding school regulations in several areas. Whether such knowledge would be valuable to the family or would cause a change in school official conduct is, of course, another issue entirely -- to be taken up in subsequent chapters.

INTERMEDIATE SCHOOL

REGISTRATION INTO SEVENTH GRADE FOR FALL 1980-81

April 15, 1980

Dear Parents and Incoming Seventh Grade Students:

Welcome to Intermediate School. We realize this is a big step form an elementary school to an intermediate school with many teachers, more classes, a larger campus, and a larger more complex student body. We want to help as much as possible.

During the weeks of April 21-29, the counseling staff will be registering your student for the coming 1980-81 school year. Enclosed is an appointment time for the three of you. We anticipate approximately 460 seventh graders from eight elementary schools and will endeavor to place students in classes where they can do their best work. This placement is based on elementary teacher recommendations, past achievement in the total elementary grades, parent requests, and certainly student desires. We encourage family involvement in planning this program.

Here are a few points of information which may help answer questions concerning youn student's seventh grade classes.

INTERMEDIATE SCHOOL REQUIREMENTS: The following courses must be taken:

a. English (two years)
b. History (two years)
c. Physical Education (two years)
d. Mathematics (two years)
e. Science (one semester each year)

The remaining class periods in their six-period day will be completed with electives. The attached sheet in the registration packet lists the elective courses.

Please complete the attached registration form and return it at the time you register during the weeks of April 21-29.

SUMMER MAILING

All Student schedules will be mailed in early September. This information will include student program by period, room number, and subject. Any student who has not received a schedule by September 10 should contact the school.

Should you have any questions regarding your student's schedule for the coming year, please feel free to contact a member of the Counseling Staff.
Telephone -9041, ext. 241 or 242.

Sincerely yours,

Assistant Principal

C. Assignment of Students to Teachers in High Schools: Disclosure of Information

All of the high schools we visited seek some parental participation in the course scheduling process. Schools typically provide a catalog of course descriptions and a statement of graduation requirements and college entrance requirements. Although course teachers are often named, usually no other information about the teacher is provided. Nor are families formally provided with information about, say, what students have gained from the courses in the past (e.g. achievement growth) or, say, which students are likely to enroll. Sometimes the course descriptions are very brief.

Students are encouraged to discuss their course schedules with their parents and to secure parental approval of their course lists. As already noted, a number of students do not obtain parental approval and, as is true for the junior high schools, from our interviews it is not possible to determine the proportion of high school students who actually discuss these issues with their parents.

In addition to course catalogs, several schools provide a handbook to the family which gives general information about the high school. These handbooks may mention but do not focus on the sorting mechanisms we discuss in Chapter 2. Night meetings, including a "college night" (providing information about college entrance requirements and college programs), "back-to-school night", and "open house" also provide settings for the schools to give information to parents.

Once again let us emphasize that the information which the high schools provide tends to be of a general nature. Parents do learn of the course offerings available to students, particularly the elective offerings. And we found a few schools (a minority) that provide some specific information about the arena scheduling method of selecting classes. Schools do not provide information about the teaching staff; they do not publicize that the school accepts parental requests for teachers; and they do not publish a detailed exposition of the method through which students are grouped academically and are selected for classes which are oversubscribed.

As for program adjustments at the start of the year, most of the high school formally set a deadline for them -- typically in the second or third week of school. The deadline is usually announced in the school bulletin and is often posted in the counseling office. Once more these written communications usually do not purport to convey the full story as to program adjustment possibilities; rather students are told to confer with their counselors should this involve a matter of concern to them.

II: CHANGING TEACHERS AFTER THE SCHOOL YEAR BEINGS: DISCLOSURE OF INFORMATION

So far as we could tell schools do not specifically inform families about the possibilities for changing their childrens' teachers once the year is underway. At the elementary level, for example, parents instead are encouraged generally to call the school if they have any sort of school problem. Thus, although parents seeking a transfer usually contact the principal, it is possible, for example, that it doesn't dawn on some parents that this is a possible remedy, and therefore that they don't pursue it. That elementary schools do not systematically disclose information on this topic is consistent with their eventual treatment of such requests individually rather than by systematic procedures.

At the secondary level, as we saw, announcements are usually made about the student's right to make program changes during the first three weeks of school; the opportunity to change teachers during other times of the year is handled differently. So far as we can tell, schools do not publish information on this matter. Some officials explained to us that if they said too much about this opportunity this might bring in too many requests, most of which would be unwarranted and some of which would be dishonestly couched. Again what schools do communicate is that a student's counselor is the person to whom students, parents and teacher should turn to in the event of a problem. In short, at the official level, one must come forward to complain before the possibility of a teacher change is presented.

However, informal networks are quite active in the secondary schools we visited. Most students are well aware of the differing stances of counselors towards program changes, and many probably appreciate the possibilities of a teacher change once the term is underway. Indeed, it appears to us that savvy students are better informed about the counselors' actual behavior than about the school's formal policy on an issue. As one counselor argued "We don't need to publicize this. Students know that we don't allow program changes; and if we said that we didn't allow changes, but then went ahead and made them, students would know that too."

As we saw in Chapter 2, teacher-initiated classes of changes are often carried out without officially notifying the parents; on the other hand, the parents often in fact know that the change is pending.

III: PROMOTION AND RETENTION:
DISCLOSURE OF INFORMATION

None of the schools we visited systematically discloses its policy on retention. Thus, as explained in

Chapter 2, while all elementary schools allow parents to block a proposed retention, this is not widely publicized by them. We cannot estimate how often teachers inform parents of their "right" to refuse a proposed retention during the parent-teacher conference on the issue. One school does make brief mention of retention in the parents' handbook, stating in a general fashion the school's philosophy on the topic. Some school staff say they do explain to parents the essentiality of their approval. Yet since our interviews suggest that the decision to retain seems to emerge from the private conference between professionals and the parents, we cannot estimate how much information, power or control parents realize they hold at the time that they evaluate and make a decision about a proposed retention.

In the later grades although schools do seem to make regular efforts to inform families of things such as graduation requirements, it is by no means clear that most parents recognize the likely later curriculum consequences of having their child put into a remedial math or English course.

IV: SCHOOL ASSIGNMENT AND TRANSFER: DISCLOSURE OF INFORMATION

The amount of information that school districts disclose about school assignments and transfer procedures varies. Most of the districts do not publish information about school assignment process. As noted in Chapter 2, parents find out about school assignment through informal networks and by contacting the district office. Although many districts publish a small map of the town which shows the attendance boundaries, generally the maps are used for in-house purposes and to provide directions to visitors, rather than as a method of educational disclosure. One district, however, which recently redrew its attendance boundaries made copies of such a map available to the public.

In the area of school transfers, we found a marked difference between the two "paths" of school transfers which we discussed in Chapter 2. In the first path, where transfers are permitted on a space available basis, we found extensive educational disclosure. Both of the school districts mail home a letter to all parents informing them of the "open enrollment" program and the application deadline. In one community, this letter is translated into two other languages for bilingual households. Pamphlets describing the program are also published by the districts. In addition, one district runs advertisements on radio and in newspapers which announce the open enrollment program and the application deadline.

The procedures which the districts follow in selecting applications are also disclosed, and in cases where a school has a surplus of applicants the procedures, as we saw, can be quite complex. For example, one district announces that school officials will hold a lottery for places at a pre-announced place and time.

In addition to providing general information about open enrollment, one of the districts publishes information describing the educational programs at its various schools. This district is a small and homogenous, and its schools seem to have uniformly high reputations. A district adminstrator creates information sheets on each of the schools, publishes a calendar with information on school activities, and organizes bus tours of the schools in the district. Most of the schools in this district have also created little pamphlets or booklets describing themselves and their educational philosphy. These are available to parents who request information about the school. In the other open enrollment district, however, no specific school information is routinely provided to families considering an out-of-neighborhood transfer.

The second path of school transfers, which entails approving transfers for students with specialized reasons, generally coincides with less disclosure. Several of the districts, however, do provide detailed descriptions of their transfer procedures and of school board policy on this issue. Parents may request this information from the district and some do. Many districts also include a statement about transfer procedures in their annual letter to parents setting out their rights and responsibilities -- to be described in the next section. Often, this letter includes a short statement noting that the district permits both intra-district and inter-district transfers. Thus, as with many other matters, families are told, not what are the procedures and criteria, but rather who they should contact if they want information. It is widely acknowledged that many parents learn of transfer procedures through informal methods -- from teachers, other parents, neighbors, and so on.

Schools typically do not disclose the acceptable grounds for approving transfer requests. In defense of this school officials volunteered, as noted in Chapter 2, that cases must be evaluated on an individual basis. They argued that it is not possible to describe criteria which actually guide decisions in many cases, noting that individual cases are so specialized and complex. Rather, they say it would be sensible only to announce that they permit transfers in "hardship" cases.

School officials also pointed to another reason for keeping the transfer criteria quiet. Districts which contain schools of unequal reputations face difficult issues in evaluating school transfers. This is especially so if the district has racial balance problems it is concerned about. Officials said that the systematic disclosure of acceptable reasons for school transfers would provide parents having "hidden agendas" with ammunition that would help them achieve transfers. Put differently, district officials fear they would have difficulty sorting out parents with hidden agendas who "give the right reason" from parents who truely have a specialized need.

V: EXISTING METHODS FOR NOTIFYING DISTRICT PARENTS OF MATTERS MANDATED BY CALIFORNIA LAW

California law requires school districts to notify parents of their rights to refuse or permit their children to participate in selected programs and activities at school. These programs cover a variety of areas ranging from immunization to sex education, to alternative schools. Typically, at the beginning of the school year school districts send an annual notice to parents summarizing these state mandated rights. Parents are often asked to sign a form and return it to the school, signifying they have been informed.

We found variations in the ways school districts handle this task. Many of the districts copy relevant passages from the California Education Code and send these home. Other school districts plainly make an effort to make these passages more intelligible to parents. Some districts also supplement this notification with additional pieces of information for parents, typically focusing on additional parents' rights and responsibilities. Some of the districts' supplementary pamphlets are quite general, while others specify rules on discipline and student conduct in some detail. Others still include different sorts of information; one district, for example, includes a calendar, a list of district phone numbers and a plea to help stop rumors. Although our sample is small, the district responses to these state mandates give some evidence about how districts react to existing educational disclosure requirements. We attach examples from a few districts, some of which are in our interview sample and some of which are not.

CHECKLIST OF REQUIRED NOTICES

TOPIC	EDUCATION CODE SECTION New	Old	COMMENTS
Parental Rights, including	48980	10921	Annual notice, Signed acknowledgment required.
Religious Instruction	46014	1086	
Immunization	49403	11704	
Administering Medication	49423	11753.1	
Medical Services	49472	11853	
Physical Examination	49451	11822	
Special Education Tuition	56031	6871	
Health/Family Life/Sex Ed.	51240	8701	
Family Life/Sex Education	51550	8506	
Alternative Schools	58501	5811.5	To be sent with parental rights notification (48980). Also must be posted in classrooms.
Pupil Records - Privacy Rights	49063	10934	Annually and upon enrollment.
Pupil Records - Directory Information	49073	10944	Annual, if district is to release any information.
Corporal Punishment	49001	10855	Annual, if district permits corporal punishment.
Career Counseling	40	91	Applies to grades 7-12 Signed acknowledgment required.
Sex Discrimination	U.S. Title IX, Ed. Amend. of 1972		District grievance policy required.
Continuing Medication	49480	12020	All parents must be notified.
Suspension	48912	10607.8	Notification by principal.
Privacy: Public Hearing	35146	967	School board must notify parents of session regarding pupil.
Discipline Rules	35291		Annual Notice of school and district discipline rules

CHECKLIST OF REQUIRED NOTICES

TOPIC	EDUCATION CODE SECTION New	Old	COMMENTS
Expulsion Hearing	48914	10608	Ten days notice required.
Release of Pupil to Peace Officer	48913	13013	School official must notify immediately.
Personal Survey re Sex, Family Life, Morality, Religion	60650	10901	Written parental consent required.
Sex Education/ Family Life Education	51550	8506	Parents have right to exclude child and/or to inspect materials.
Venereal Disease Education	51820	8507	Parents have right to inspect materials and/ or to exclude child.
Pupil Records: Transferring Student	49068	10939	Parents' rights to inspect and challenge transferred records.
Academic Failure	49067	10938	Notify parent when evident student failing course.
Continuous School Program	37616	32110.5	Notification of public hearing on issue.
Release of Information pursuant to Court Order	49077	10948	

claremont unified school district

2080 North Mountain Avenue • Claremont, California – 91711 • (714) 624.9041

RICHARD S. KIRKENDALL, PH.D., SUPERINTENDENT
MARGARET G. HODDER, PH.D., ASSISTANT SUPERINTENDENT
CHARLES R. ABBOTT, BUSINESS MANAGER
ALEXANDER HUGHES, ADMINISTRATOR, PERSONNEL SERVICES

Dear Parent or Guardian:

California Education Code 49063 stipulates that parents shall be notified of certain rights at the time of initial school enrollment and once each year thereafter. Following is that information which pertains specifically to student records.

The Claremont Unified School District Coordinator of Student Services has been designated as the official custodian of the student records. Copies of all records are maintained at the school site under the direction of the site principal. Table I indicates the types of records kept and the transfer of records procedure. Table II describes directory information and the parties to whom this information will be made available, unless the school is notified in writing to the contrary. Once a parent has notified the District as to what can be disclosed as directory information for his or her child, that notification will be honored until such time as the parent notifies the District in writing of a different designation.

Parents have the right of access to records. This request should be made to the site principal who will provide consultation for your review of the records. A parent may request removal of any information therein that is alleged to be (1) inaccurate, (2) an unsubstantiated personal conclusion or inference, (3) a conclusion or inference outside of the observer's area of competence, or (4) not based on the personal observation of a named person with the time and place of the observation noted. A written request for removal of information should be addressed to the District Coordinator of Student Services who will establish a meeting within 30 days of such request to review the allegation. Further appeal to the governing board would follow the same procedure.

A copy of the District's student records policy is available in the school office and at the District's Education Center. Parents and eligible students may review the policy at those locations and obtain copies.

Education Code 49065 stipulates that charges for reproducing records for parents should not exceed the actual cost of reproduction. The Claremont Unified School District will charge a fee of five cents ($.05) per page for this service.

In addition to the provisions of the Education Code, a parent's right of access to pupil records as well as a parent's right to control the disclosure of student records is contained in the Family Educational Rights and Privacy Act of 1974. If you feel that any rights accorded you by the Family Educational Rights and Privacy Act of 1974 are being violated, you have a right to file a complaint with the Department of Health, Education and Welfare. If so, you may write to Family Educational Rights and Privacy Act Office, Department of Health, Education and Welfare, Room 526 F, Hubert Humphrey Building, Washington D. C. 20201.

If you know a parent who will not understand this notice, notify the District. The parent will be provided this information in his or her home language.

Sincerely,

Jack M Smith

Jack M. Smith
Coordinator of Student Services

JMS:ct

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claremont unified school district

2080 North Mountain Avenue • Claremont, California – 91711 • (714) 624.9041

Dear Parent or Guardian:

Governing Boards of school districts are required to notify parents or guardians of certain rights and responsibilities as specified in the Education Code. The attached Education Code sections are concerned with these rights and responsibilities.

Will you please sign this letter and return it to the school, acknowledging that you have been notified. Your signature does not indicate consent for the pupil to participate in any particular program.

Thank you for your prompt acknowledgment.

Margaret G Hodder

Dr. Margaret G. Hodder
Assistant Superintendent

Signed ______________________________

Address ______________________________

____

Parent or Guardian of ______________________________
(Name of pupil)

claremont unified school district

2080 North Mountain Avenue • Claremont, California – 91711 • (714) 624.9041

Dear Parents:

Following are condensed versions of portions of the Education Code which the legislature has asked us to bring to your attention:

46014 Religious Exercises: With written parental consent a pupil may be excused from his regular classes in order to participate in religious exercises at a place designated by the Church.

49403 School Immunizations: Immunizations may be administered to pupils whose parents or guardians have consented in writing.

49423 Medication at School: Any student who is required during the school day to take medication prescribed for him by a physician may be assisted by the school nurse or other designated school personnel provided the school district receives (1) a written statement from the student's physician detailing the method, amount, and time schedule by which such medication is to be taken and (2) a written statement from the parent requesting that the school district assist the pupil in taking the medication prescribed by his/her physician.

49451 Physical Examination: A parent may file annually with the principal of the school a statement in writing stating that he does not consent to a physical examination. However, when there is reason to believe that the child is suffering from a recognized contagious or infectious disease, he shall be sent home and shall not be permitted to return until the school authorities are satisfied that a contagious or infectious disease does not exist.

49455 Vision Screening: On first admission to school and at least every third year following up to the eighth grade, each student shall have his vision appraised by the school nurse. This may be waived upon receipt of a report from a physician and surgeon or an optometrist giving status of the child's visual acuity and color vision. The provisions of 49451 apply here.

49472 Medical Insurance: Any school district may make available medical or hospital insurance through nonprofit membership corporations defraying the cost through group, blanket or individual policies of accident insurance. No students shall be compelled to accept such services.

49480 Notification of Medication: The parent of a student taking medication on a continuing basis shall inform the school nurse or other designated school employee of the medication being taken, the current dosage, and the name of the supervising physician. The nurse may counsel with school personnel regarding the possible effects of the drug on the child's physical, intellectual, and social behavior.

51240 Health Instruction: By written request a student may be excused from any part of health instruction which conflicts with religious training and belief of the parent.

51550 Growth and Development: If classes are offered in which human reproductive organs and their functions and processes are described, illustrated or discussed, the parents or guardians shall be notified and provided the opportunity to request in writing that their child not attend the class. Such requests shall be valid for the school year but may be withdrawn at any time.

56031 Private Schooling for Handicapped: Any handicapped pupil for whom a special education placement is unavailable or inappropriate may receive services in a private nonsectarian school. Please contact coordinator of student services for specific information.

58500 Alternative Schools: California state law authorizes all school districts to provide for alternative schools. Section 58500 of the Education Code defines alternative school as a school or separate class group within a school which is operated in a manner designed to:

(a) Maximize the opportunity for students to develop the positive values of self-reliance, initiative, kindness, spontaneity, resourcefulness, courage, creativity, responsibility, and joy.

(b) Recognize that the best learning takes place when the student learns because of his desire to learn.

(c) Maintain a learning situation maximizing student self-motivation and encouraging the student in his own time to follow his own interests. These interests may be conceived by him totally and independently or may result in whole or in part from a presentation by his teachers of choices of learning projects.

(d) Maximize the opportunity for teachers, parents and students to cooperatively develop the learning process and its subject matter. This opportunity shall be a continuous, permanent process.

(e) Maximize the opportunity for the students, teachers, and parents to continuously react to the changing world, including but not limited to the community in which the school is located.

In the event any parent, pupil, or teacher is interested in further information concerning alternative schools, the county superintendent of schools, the administrative office of this district, and the principal's office in each attendance unit have copies of the law available for your information. This law particularly authorizes interested persons to request the governing board of the district to establish alternative school programs in each district.

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NOTICE OF COMPLIANCE

In compliance with federal law, the Board of Education of the Claremont Unified School District, at its meeting on May 17, 1976 adopted the following policy:

> It shall be the policy of the Claremont Unified School District not to discriminate on the basis of sex in the educational programs or activities which it operates. The district is required by Title IX of the Education Amendments of 1972 and the implementing regulations not to discriminate on the basis of sex. This requirement not to discriminate extends to employment by the district.

The Title IX Regulation recognizes the possibility that sex discrimination or the differential treatment of females and males may be covert and unconscious. The inclusion of a requirement for self-evaluation and maintenance of documentation of program modifications or remedial steps provides a method for systematic assessment and action to ensure compliance with the law. All schools in the district have participated in such an evaluation process.

On July 6, 1976 the Board further approved the following policy regarding equal opportunity in employment:

> It shall be the policy of the Claremont Unified School District to provide equal opportunity in employment for all persons and to prohibit discrimination based upon race, color, religion, age, physical handicap, ancestry, national origin or sex in every aspect of personnel policy and practice in employment, development, advancement, and treatment of employees, and to promote the total realization of equal employment opportunity through a continuing affirmative action program.

The Affirmative Action Advisory Committee, a citizens advisory group annually appointed by the Board of Education, will assist in the monitoring of the district's continuing efforts to meet the requirements of the law.

Inquiries concerning the application of Title IX and the implementing regulations to the district or questions concerning the district's Affirmative Action Employment Program may be referred to Mr. Alexander Hughes, who has been designated as the district's Affirmative Action Officer and the official responsible for Title IX compliance. Mr. Hughes' office is at 2080 North Mountain Avenue, Claremont, California 91711; telephone number of his office is 624-9041, ext. 266.

Inquiries may also be directed to the Director of the office for Civil Rights, Department of H.E.W., Washington D. C.

OAKLAND UNIFIED
SCHOOL DISTRICT

BOARD OF EDUCATION POLICY ON STUDENT CONDUCT AND DISCIPLINE FOR

- *PUPILS*
- *PARENTS*
- *TEACHERS*
- *ADMINISTRATORS*

ADOPTED 1978

BOARD OF EDUCATION

Russell Bruno, V.P.
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Seymour Rose, President
Ruth B. Love
Superintendent of Schools

James Norwood
Peggy Stinnett
David S. Tucker, Jr.

BOARD OF EDUCATION STATEMENT

As elected trustees, we are charged with the responsibility of establishing policies that will promote the education of youth in Oakland. The rights of students, parents, teachers and administrators shall be protected and all will respect the rights of others.

As board members, we are conscious of the important role that acceptable behavior plays in good instruction.

Furthermore, we have firm convictions that communication, consistency and involvement between the home and school will accomplish the educational goals which parents and teachers mutually desire for Oakland students.

The Board of Education believes that a self-disciplined citizenry is essential for the maintenance of a free society. The rights and responsibilities outlined in this brochure are guidelines to direct our thinking and actions toward acceptable patterns of social behavior.

Everyone concerned with student behavior shall be expected to deal with students in a firm, fair and consistent fashion. We request the cooperative effort of all concerned to see that these goals are achieved.

SUPERINTENDENT'S MESSAGE

The statements in this brochure are made so that students, parents, teachers, and administrators may understand their rights as well as their responsibilities.

The administration is responsible for maintaining good discipline at the school site. Without appropriate order and behavior, the educational process will suffer and learning will not take place. Therefore, it is expected that every staff member, student, and parent within the school community will assume a share of the responsibility to see that a proper atmosphere for learning exists.

It shall be the responsibility of teachers, students, and administrators to see that rules are fair and reasonable. Every teacher, administrator, and other designated school employee shall assume responsibility for the enforcement of the rules.

I sincerely hope that all those who use this brochure do so realizing that their responsibilities in the educational process and their personal rights are of equal importance.

Educational excellence is dependent upon developing sound programs and good citizenship. Your efforts to fulfill the promise of excellence are deeply appreciated.

INTRODUCTION

The responsibility for fostering desirable standards of conduct in Oakland Schools is the responsibility of the Board of Education, administrators, teachers, supportive personnel, parents, and students alike. The Board of Education has adopted policies and procedures relating to student conduct with a goal of promoting a school atmosphere conducive to learning and the safety and welfare of students and school staff.

This pamphlet summarizing the policies and procedures relating to student conduct in the Oakland School District has been prepared for the information of all students and other concerned persons in the community.

PHILOSOPHY AND GOALS

The primary purpose of the Oakland Unified School District is to provide an educational program responsive to the needs of the individual students, community, and society. Fulfillment of this purpose requires the intellectual, financial, and moral support of the community.

We aim to provide all students with equal opportunities and resources to develop a sense of individual identity and self-worth, and to realize their highest intellectual and physical capabilities.

Sense of Self - To assist students to attain abilities and understanding leading to self-realization and self-worth so they can:

- Manage their own affairs, make personal decisions, and achieve self-discipline.
- Understand and control their emotions.

Human and Social Values - To help students to develop skills and attitudes characteristic of effective social relations within the local community and the larger society so that they can:

- Develop respect for and acceptance of others and their rights.
- Function effectively in a variety of social, cultural, and ethnic settings.

Responsible Citizenship - To encourage students to develop habits and attitudes associated with moral, ethical and civic responsibility so that they can:

- Respect the worth and dignity of self and others.
- Respect property, public and private.
- Live and work in harmony with others.

RIGHTS

Student

- to be informed of the charges and to tell his/her side before the decision to suspend is made.

Parent/Guardian

- to oral notification of suspension that day and written notification postmarked no later than one school day after suspension.
- to a school-site conference by the third school day of a given period of suspension (Ed. Code 48910)
- to appeal to Area Superintendent
- to a DHP (disciplinary hearing panel) within 20 days of recommendation for expulsion
- to notification by certified mail of a scheduled DHP at least 10 days prior to hearing
- to appeal expulsion by DHP to Board of Education
- to appeal expulsion by Board of Education by sending written notice to County Board of Education (Ed. Code 48920)

CIVIL RIGHTS

- The Principal may search a student or a student's locker if there is reasonable cause to believe that the student may have a concealed weapon, narcotics, stolen property, or contraband.
- Police do not have the right to search the person of the student during the course of an investigation, unless the search is either incident to an arrest or there is reasonable cause for the search.
- Police may question a student in school in connection with an investigation. The student has the right to answer or to decline to answer such questions (Ad. Bulletin 6010).
- The Principal or his/her designee must be present when a student is being questioned by the police.
- Where a statement is being taken by the police, the student shall not be requested to sign the statement unless approval has been obtained from parent/guardian (Ad. Bulletin 6010).
- The police may not remove a student for investigation purposes without arrest, until parental approval is obtained, except in cases of imminent physical danger. (Ad. Bulletin 6010.)

SCHOOL ATTENDANCE

Regular school attendance is a high priority for the district, both in educational and funding terms. All school districts in California must rely on money received from the State based on regular and consistent school attendance, to support quality education programs within the district.

It is extremely important that students remind their parents to write a note when absent. Failure to do this, will not only count as an unexcused absence, but will cause the district to lose its' State funds.

Valid absences are the student's illness, doctor/dentist appointments and attendance at a funeral (1 day), all other absences are *invalid* and should not occur during the school day. Proper planning by students and parents can lead to regular school attendance and learning.

SARTS AND SARBS

Students whose attendance is irregular or truant, and whose behavior is insubordinate or incorrigible may be referred to the SART (School Attendance Review Team), and if no improvement is noted, to the Area SARB (School Attendance Review Board) for appropriate action. If attendance and behavior fail to show improvement at the SARB, the chairperson may refer the matter to the County Superintendent and to the juvenile court.

CORPORAL PUNISHMENT

Personnel shall not administer corporal punishment to students.

SUSPENSION

Suspension is any temporary removal or exclusion of a pupil from regular classroom instruction or from school as initiated by a teacher or administrator for adjustment purposes. Students shall be suspended when other means of correction fail or when the student's presence is likely to be dangerous to others or disrupt the instructional program.

Students may be suspended for:
- Causing or attempting to cause damage to and/or theft of property;
- Causing, attempting to cause or threatening to cause physical injury except in self-defense;
- Possessing, selling, or providing to a pupil at school or at a school activity off school grounds a dangerous weapon;
- Unlawfully possessing, using, providing, being under the influence of drugs or alcohol;
- Possessing or using tobacco (except as allowed by high schools with designated smoking areas;)
- Committing an obscene act or habitual profanity;
- Wilfully defying school authorities.

The principal or other appropriate administrator may suspend a student for no more than five (5) consecutive school days. The procedures involved in a suspension are:
- As soon as possible, the principal or other appropriate administrator should hold an informal conference between the teacher and the student to allow the student the opportunity to explain his or her behavior and to discuss the reasons for suspension.
- Parents are given written and telephone notices of suspension within twenty-four (24) hours. If the school cannot reach a parent by phone, a student will not be sent home in the middle of the day.
- Parents are directed to attend a conference as soon as possible to discuss the causes and duration of suspension. The law requires parents to respond to a request for such a conference without delay.

Suspended students are allowed to complete and receive credit for all assignments and tests missed during the suspension which can reasonably be provided by the teacher. The parent or guardian of the suspended student may request a meeting with the Superintendent or her designee to discuss the causes and appropriateness of the suspension. Such request should be directed to the appropriate Area Office. No pupil may be suspended for more than twenty (20) days in any one school year.

TEACHER SUSPENSION

A teacher may suspend a student from class for any of the above acts for the day and the following day. A teacher must arrange a conference with the parent or guardian of the child as soon as possible.

A teacher may also refer a student to the principal for consideration of suspension from school for any of the above acts. Suspension is mandatory if a student brings a dangerous weapon on to school grounds or attacks or menaces a School District employee.

DETENTION

A teacher can refer a student to the school counselor or appropriate administrator or detain a student for not more than one hour at the end of the school day, if suspension is not mandatory.

EXEMPTIONS

Students may be exempted from the laws of compulsory school attendance at the request of their parents for various extenuating circumstances as defined by state law. Please call 836-8142 for information on requesting such exemption.

EXCLUSIONS

The Board of Education may exclude students from attending school for any of the following:
- Filthy or vicious habits, contagious or infectious diseases including noncompliance with state immunization requirements;
- Physical or mental disability inimical to the welfare of other pupils.

EXPULSION

Expulsion is an involuntary suspension from the regular classroom instruction for longer than five (5) days or involuntary transfer to a continuation school or program. A student may be recommended for expulsion for any of the acts listed above as grounds for suspension. When expulsion is recommended, the Superintendent will convene a disciplinary hearing panel. The student and his or her parent or guardian will be notified of his or her rights, including his or her opportunity to appear, and to be represented by counsel. The purpose of the hearing is to discuss the causes and appropriateness of expulsion. The disciplinary hearing panel will make a finding as to the appropriateness of the expulsion to the Superintendent. If the disciplinary hearing panel recommends and the Superintendent determines that expulsion is appropriate, the Superintendent will recommend such action to the Board of Education. The Board then decides whether expulsion is appropriate.

Please call: 836-8142 for further information concerning due process or appeals related to expulsion.

GROOMING AND DRESS

All students are to maintain personal standards of dress and grooming appropriate to class and school activities. Footgear must be worn at all times — for reasons of health and safety.

GRADUATION REQUIREMENTS

The unit requirements and proficiency tests are recommended for all high school students. They are mandatory for students who graduate after June 1980.

A diploma of high school graduation shall be granted to any student who completes a total of 21 units of which at least 15 are earned in grades 10-12 and who has a grade-point average of 1.51 or higher. Students must also pass a test of proficiency in reading comprehension, writing, and computation skills.

GRADE PROGRESSION

The following minimum number of units must be earned for placement in the next grade:

5 units for 10th grade standing
9 units for 11th grade standing
15 units for 12th grade standing
21 units for graduation

NOTE: ONE SEMESTER COURSE EQUALS ½ UNIT

Necessary information regarding specific course requirements and programming should be obtained from counselors at the individual school site.

FREEDOM OF EXPRESSION

Students have the right of freedom of speech within the public school environment. This includes use of bulletin boards, circulation of printed materials, wearing of insignia and oral statements.

However, freedom of speech is not absolute. Not protected are:
libel and slander, obscenity, and speech which disrupts class work or which causes substantial disorder or invasion of the rights of others.

The school administrator may regulate by reasonable restrictions, time, place and manner of student expression.

OAKLAND PUBLIC SCHOOLS

September 1979

Please fill out
and sign form
on last page
and return
to school

NOTICE OF RIGHTS TO PARENTS/GUARDIANS AND STUDENTS

California law requires the School District to notify you as parents or guardians of minor students of your rights and that you may either permit or refuse to permit your child to take part in any of the activities, programs or courses listed below. Please note that the code sections or other state or federal laws dealing with each activity, course or program are only briefly summarized in this notice. Complete copies are available upon request from the principal's office. Please check if there are questions about other programs.

ABSENCE FOR RELIGIOUS PURPOSES—After completing a minimum day, students may be absent from school for religious purposes at a place away from school. Absences are limited to four days per month. (Education Code 46014.)

SEX EDUCATION COURSES AND VENEREAL DISEASE EDUCATION—Courses may include health, family life and sex education in which reproductive organs and their functions are described, illustrated or discussed. In order to be excused from attendance at these courses because of religious beliefs (including personal moral convictions), students must have written permission from their parent or guardian. (Education Code Sections 51550, 51820, 51240.) *Note:* These Education Code Sections do not apply to words or pictures in any state recommended science, hygiene or health textbooks. Parents or guardians have the right to inspect instructional material used in these classes provided they give the school 15 days notice.

IMMUNIZATIONS FOR COMMUNICABLE DISEASE—Parent or guardian must file written permission before their child may participate in any immunization program. (Education Code 49403.) No person may be unconditionally admitted as a pupil of any school district unless prior to his/her first admission to school in California he/she presents documentary proof that he/she has been immunized for measles (rubeola), polio, diphtheria, pertussis (whooping cough) and tetanus. 17 Cal. Adm. Code No. 6020. A pupil who has not received these required immunizations will be admitted conditionally if he/she provides written verification that he/she has received the first dose of the appropriate vaccine within two weeks of admission. Health and Safety Code No. 3382. A child will be admitted unconditionally to school without immunization if the parent or guardian files a letter with the school stating that such immunization is contrary to his/her belief. Health and Safety Code No. 3385.

CHILDREN NEEDING MEDICATION—Where a child is required to take medication during the regular school day, a parent or guardian may request assistance of the school nurse or other designated school personnel in administering the medication. This requires written instructions from the prescribing physician and a written request from the parent or guardian. (Education Code 49423.)

PHYSICAL EXAMINATIONS—A physical examination will not be given to a child if a parent has filed written objection to such an examination for the 1979-1980 school year. However, it should be noted that a child may be sent home if he/she is believed to be suffering from a recognized infectious or contagious disease. (Education Code 49451.)

MEDICAL AND HOSPITAL SERVICES—The District makes available to parents on a referral basis optional medical and hospitalization insurance at their own expense for pupils who may be injured at school, at school-sponsored events, or while being transported to field trips and excursions. (Education Code 49472.)

PUPIL RECORDS—Parents and legal guardians may arrange to inspect and review all official records, files and other data directly related to their minor child. Students, 16 years of age or older, or who have completed the 10th grade may arrange to inspect and review all official records, files and other data concerning themselves (see pages 2 and 3). (Education Code 49063.)

HANDICAPPED PUPILS; PRIVATE SCHOOL PROGRAMS—The School District is required to provide free appropriate special educational facilities and services to exceptional children. Education Code No. 56030, 56033. Please contact the Director of Programs for Exceptional Children for further information.

TESTS/PERSONAL BELIEFS—No test, questionnaire, survey or examination containing any questions about the pupil's or his parents' or guardians' personal beliefs or practices in sex, family life, morality and religion, shall be administered to any pupil in kindergarten or grade 1 through 12, inclusive, unless the parent or guardian of the pupil is notified in writing that such test, questionnaire, survey, or examination is to be administered and the parent or guardian of the pupil gives written permission for the pupil to take such test, questionnaire, survey, or examination. (Education Code 60650.)

ALTERNATIVE SCHOOLS—California state law authorizes all school districts to provide for alternative schools. In the event any parent, pupil or teacher is interested in further information concerning alternative schools, the county superintendent of schools, the administrative office of this district, and the principal's office in each attendance unit have copies of the law available for your information. This law particularly authorizes interested persons to request the governing board of the district to establish alternative school programs in each district. (Education Code 58500.)

STUDENT CONDUCT & DISCIPLINE—Pursuant to California state law, the Board of Education has adopted policies designating district-wide standards of student conduct and regulations governing disciplinary action procedures to be used in schools throughout the District. The responsibility for fostering these standards of conduct is shared by Board members, administrators, teachers, supportive personnel, parents, and students alike. A pamphlet summarizing these policies and procedures is distributed with this notice and is available throughout the community. (Education Code 35291.)

CAREER COUNSELING—If a district provides career counseling or course selection activities in grades 7 through 12, parents are to be notified in writing at least once before the career counseling and course selection activities take place. This is required so that parents may participate in the counseling sessions and decisions.

NON-DISCRIMINATION POLICY—The Oakland Unified School District does not discriminate in any program, activity, or in employment on the basis of age, creed, sex, race, ethnic background, marital status, national origin, or handicap. (Title IX of the Education Amendments of 1973; Section 504 of the 1973 Rehabilitation Act; Oakland Unified School District Affirmative Action Plan, adopted March 30, 1976.)

All student complaints of discrimination are resolved according to the procedures set forth in Administrative Bulletin No. 6012. Employee and applicant complaints are resolved according to Administrative Bulletin 8012. Inquiries concerning the filing of grievances may be directed to the Office of the School Principal, Area Office or Affirmative Action Office, which also coordinates the School District's policies and regulations pertaining to affirmative action programs. For further information, contact John J. Carusone, Administrative Assistant for Affirmative Action/Urban Affairs, School Administration Building, 1025 Second Ave., Oakland, CA 94606. Telephone 836-8217.

○ NOTIFICATION TO PARENTS/GUARDIANS (PUPIL RECORDS)

Dear Parents/Guardians:

In the course of your son/daughter's education, the School District will keep records as deemed necessary to provide programs to meet his/her needs and interests. These include records which we are required to maintain by state law: (1) Legal name and sex of pupil; (2) date and place of birth; (3) name and address of parent of minor pupil; (4) address of minor pupil if different than the above; (5) entering and leaving date of each school year and for any summer session or other extra session; (6) subjects, marks or credits toward graduation; (7) immunization and health information; (8) participation in special education programs; (9) parental authorizations or prohibitions of pupil participation in specific programs; (10) date of high school graduation or equivalent; (11) parental restrictions regarding access to directory information; (12) parental challenges to records or to disciplinary action; and (13) log or record those persons or organizations requesting or receiving information from the record; and records which state law permits us to maintain, such as: (1) objective counselor and/or teacher ratings; (2) standardized test results; (3) verified reports of relevant behavioral patterns; (4) all disciplinary notices and attendance records.

You have the right to inspect and review any and all records, files, and data related to your son/daughter; they will be available for such review at any mutually convenient time during the regular school day. If you have any concern regarding the accuracy or appropriateness of any information or record maintained by the school, please do not hesitate to inform your school of that concern. If you desire to challenge the contents of these records, we will inform you of the procedure you must follow in making such a challenge. You may also have copies of your child's records at a cost of 5 cents per page.

You may consent in writing to the release of your child's records or any portion thereof to other persons. The recipient must agree that he/she will use the records only for the purposes specified and will not disseminate the records to other persons.

The District is not authorized to permit access to anyone without written parental consent except access shall be permitted to the following:

1. School officials, teachers and other employees of the Oakland Unified School District, provided said persons have a legitimate educational interest in inspecting the record.

2. Officials and employees of other public schools, or school systems (including local, county or state correctional facilities where educational programs leading to high school graduation are provided), where the pupil intends to or is directed to enroll.

3. Federal education officials, the United States Office for Civil Rights, the Superintendent of Public Instruction, the County Superintendent of Schools, or their respective designees, where such information is necessary to audit or evaluate a state or federally funded program or where it is necessary pursuant to state or federal law.

4. Other state and local officials, to the extent that state law requires the information specifically to be reported.

5. A pupil 16 years of age or older, or who has completed the tenth grade, who requests such access. Normally, a pupil under age 16 and below grade 10 may assert rights of access only through parents. However, certificated school personnel may in their discretion disclose records to such pupils.

The School District may also release information from student records to the following:

1. Appropriate persons in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or of other individuals.

2. Agencies or organizations requesting the records in connection with a student's application for, or receipt of, financial aid.

3. Accrediting associations.

4. Organizations conducting studies on behalf of educational agencies for developing, validating, or administering predictive tests, administering student aid programs, and improving instruction, if such studies are conducted in such a manner as will not permit the personal identification of students or their parents by persons other than representatives of such organizations and if such information will be destroyed when no longer needed for the purpose for which it is conducted.

5. Officials and employees of private schools when pupil has enrolled or intends to enroll.

The District's policy regarding retention and destruction of records is as follows:

1. No additions except routine updating shall be made to the record after high school graduation or permanent departure without the prior consent of the parent or adult pupil.

2. Permanent pupil records shall be preserved in perpetuity. Unless forwarded to another district, interim pupil records and permitted pupil records may be adjudged to be disposable when the student leaves the district or when their usefulness ceases. District personnel shall assure that pupil records not be available to possible public inspection in the process of destruction or disposal.

In addition to the records specified above, the District maintains the following "Directory Information" regarding your child:

Student's name, address, date and place of birth; major field of study; participation in officially recognized activities and sports; weight and height of athletic team members; dates of attendance; degrees and awards received; most recent previous public or private school attended by student.

Such information may be released to PTA and other school-related organizations, representatives of the news media, employers, prospective employers, private schools or colleges, but not to any other private profit-making entities or organizations. No Directory Information will be released if you notify the District that such information shall not be released.

SEE OTHER SIDE ➡

OAKLAND PUBLIC SCHOOLS

Board of Education

Seymour Rose
President

Russell Bruno
Vice-President

Barney E. Hilburn

Elizabeth Laurenson

James Norwood

Peggy Stinnett

David S. Tucker, Jr.

* * *

Ruth B. Love
Superintendent of Schools

Please fill out and sign this portion and return to school within 10 days

PARENT/GUARDIAN ACKNOWLEDGMENT

I have received and read these notices regarding my rights relating to activities, courses, or programs and pupil records which might affect my child during the 1979-1980 school year, and the accompanying student conduct and discipline pamphlet.

(Signed) ________________________________

Address________________________________

Parent or
Guardian of________________________________
(Name of Pupil)

September 1979

SAN JUAN UNIFIED SCHOOL DISTRICT

3738 Walnut Avenue • Carmichael, California 95608 • 916-484-2011

August, 1977

Dear Parent:

The San Juan Unified School District is required to give annual notification to parents regarding certain portions of the instructional program and matters related to school administration. Acknowledgement of receiving this information is located at the bottom of this page. If you have questions or concerns, please contact the principal of your child's school.

Sincerely yours,

JOHN STREMPLE, Superintendent

COMPULSORY SCHOOL ATTENDANCE - (Ed. Code Section 48200)
The law requires school attendance of children and youth between the ages of 6-18. Children and youth between the ages of 6 and 16 are subject to compulsory full time attendance. All youth 16-18 are subject to compulsory continuation education attendance. (E.C. 48200 For every out-of-school youth under 18, a legal disposition is required.

RELEASE FOR RELIGIOUS INSTRUCTION - (Ed. Code Sections 46010-46014)
California school districts may release pupils from school (after the minimum school day), with written parental or guardian consent, to participate in certain kinds of religious exercises. Request forms for this purpose may be obtained in your school office.

SEX EDUCATION COURSES AND VENEREAL DISEASE INSTRUCTION - (Ed. Code Sections 51550-51551 and 51820)
Family life education programs may be provided in grades K through 12. Venereal disease instruction will be provided in grades 7 through 12. If instruction about human reproductive organs and their functions, processes, and diseases are included in your child's class, you will have an opportunity to inspect, review, and evaluate the written or audio-visual materials to be used. You will also be asked to inform the principal of your school in writing whether or not you wish your child to participate.

EXCUSE FROM HEALTH INSTRUCTION WHICH CONFLICTS WITH RELIGIOUS OR MORAL BELIEFS - (Ed. Code Sections 51240-51246)
During the school year, the instructional program in some classes at some grade levels may include instruction about health. If such instruction will conflict with your religious training, beliefs, or personal and moral convictions, please advise the principal of your school, in writing, not to include your child in this phase of the instructional program.

CORPORAL PUNISHMENT - (Ed. Code Sections 49000-49001)
Teachers, principals, and other certificated personnel are authorized to administer reasonable corporal punishment to pupils when such action is deemed an appropriate corrective measure. Corporal punishment will not be administered without prior written approval of the pupil's parent or guardian. The written approval shall be valid for the school year but may be withdrawn by the parent or guardian at any time.

IMMUNIZATION FOR COMMUNICABLE DISEASE - (Ed. Code Sections 49400-49408)
A parent must give consent in writing for a licensed physican to administer an immunizing agent.

(Please read reverse side.)

CUT HERE AND RETURN ACKNOWLEDGEMENT TO SCHOOL

Pupil's Name ______________________ Grade ______
(Last Name) (First Name)

I ACKNOWLEDGE RECEIPT OF INFORMATION PERTAINING TO PARENT RIGHTS AND SPECIALIZED INSTRUCTIONAL PROGRAMS.

Signature of Parent or Guardian ______________________ Date ______

Is your child on a continuing medication program? YES ____ NO ____
(Please check)

ADMINISTRATION OF PRESCRIBED MEDICATION FOR PUPIL - (Ed. Code Sections 49420-49425)

The school nurse or other designated school employee will administer prescribed medication during the school hours only upon written request of both the physician and the parent(s) or the guardian.

CONTINUING PROGRAM OF MEDICATION - (Ed. Code Section 49480)

State law requires that the parent(s) or guardian notify the school when their child is on continuing medication for a nonepisodic condition; i.e., asthma, hayfever, hyperactivity, diabetes, epilepsy, etc.

EXEMPTION FROM PHYSICAL EXAMINATION - Ed. Code Sections 49450-49457)

A physical examination will not be given to a child whose parent requests this exemption in writing. However, the child may be sent home if, for a good reason, he is believed to be suffering from a recognized contagious or infectious disease.

EVALUATION OF VISION - (Ed. Code Sections 49450-49457)

Evaluation of vision of a child, including tests for visual acuity and color vision by the school nurse or teacher, if authorized, will be made upon first enrollment and at least every third year thereafter. The evaluation may be waived upon presentation of an appropriate certificate from a physician or optometrist.

MEDICAL AND HOSPITAL SERVICES - (Ed. Code Sections 49470-49474)

Pupils injured at school or school-sponsored events or while being transported may be insured at district or parent expense.

STUDENT RECORDS AND INFORMATION - (Ed. Code Section 49060-49078)

Compiling appropriate facts and records pertaining to each student is a necessary function of the school district. This information is needed as a record of each student's progress. The educational records for your child are available for your review upon request to the building principal. You may receive a copy of these records and you have a right to a hearing to challenge their contents. If your child changes schools, his/her cumulative record will be forwarded. Special records (medical, psychological, or special education records) will be sent to other school districts only if requested in writing by parent/legal guardian or adult student.

Student directory information may be released to those cooperating agencies normally connected with the activities of a school or school district. These include PTAs, representatives of the news media, public and government agencies, employers and prospective employers. Directory information includes the following: student's name, address, telephone listing, date and place of birth, major field of study, participation in officiall recognized activities and sports, weight and height of members of athletic teams, dates of attendance (entry and withdrawal), degrees and awards received, most recent previous educational agency or institution attended by the student. Parents desiring this information not to be released are requested to make this known in writing to building principal of your child's school or Ann Henderson, Custodian of Records, San Juan Unified School District, 3738 Walnut Avenue, Carmichael, CA 95608.

NONDISCRIMINATION ON THE BASIS OF SEX - (Federal Regulation, Title IX)

The district has an operating policy of nondiscrimination on the basis of sex in its educational programs and activities. Cornelia Whitaker, Director of Curriculum, San Juan Unified School District, 3738 Walnut Avenue, Carmichael, CA 95608, is the Title IX Coordinator.

RESIDENCY REQUIREMENTS FOR SCHOOL ATTENDANCE - (Ed. Code Section 48200)

To establish the right for attendance in a school district, a child of compulsory attendance age (6-18 years) must be living with a parent, relative, legal guardian, or a foster parent. If you have questions regarding the residency of your child, contact your building principal or Merle Padilla, Supervisor, Child Welfare and Attendance (484-2671).

JS/AH:nd
8-77

E.gu.28

SAN LEANDRO UNIFIED SCHOOL DISTRICT

NOTICE OF RIGHTS TO PARENTS/GUARDIAN AND STUDENT

California law requires the School District to notify you as parents or guardians of minor students of your rights and that you may either permit or refuse to permit your child to take part in any of the activities, programs, or courses listed below. Please note that the code sections or other state or federal laws dealing with each activity, course or program are only briefly summarized in this notice. Complete copies are available upon request from the custodian of records.

1. ABSENCE FOR RELIGIOUS PURPOSES: After completing a minimum day, students may be absent from school for religious purposes at a place away from school. Absences are limited to four days per month. (Education Code 46014)

2. SEX AND VENEREAL DISEASE EDUCATION COURSES: The governing board shall not require students to attend a sex education, family life education or venereal disease education course offered in the schools. If such classes are offered, the parent of each student enrolled in such class shall first be notified in writing of the class. Opportunity shall be provided to each parent to request in writing that his/her child not attend the class. Opportunity shall be provided to each parent to inspect and review materials to be used. (Education Code 51550, 51820)

3. IMMUNIZATIONS FOR COMMUNICABLE DISEASE: Parent or guardian must file written permission before their child may participate in any immunization program. (Education Code 49403) No person may be unconditionally admitted as a pupil of any school district unless prior to his first admission to school in California he presents documentary proof that he has been immunized for measles (rubeola), polio, diphtheria, pertussis (whooping cough and tetanus). (17 Cal. Adm. Code: 6020) A pupil who has not received these required immunizations will be admitted conditionally if he or she provides written verification that he or she has received the first dose of the appropriate vaccine within two weeks of admission. (Education Code 3382) A child will be admitted unconditionally to school without immunization if the parent or guardian files a signed statement with the school stating that such immunization is contrary to his or her belief. (Education Code 3385)

4. CHILDREN NEEDING MEDICATION: When a child is required to take medication during the regular school day, parent or guardian may request assistance of the school nurse or other designated school personnel in administering the medication. This requires written instructions from the prescribing physician and a written request from the parent or guardian. (Education Code 49423)

5. PHYSICAL EXAMINATIONS: A physical examination will not be given to a child if a parent has filed written objection to such an examination for the 1978-79 school year. However, it should be noted that a child may be sent home if she/he is believed to be suffering from a recognized infectious or contagious disease. (Education Code 49451)

6. MEDICAL AND HOSPITAL SERVICES: The governing board may, under certain conditions, provide or make available medical or hospital service for injuries to district students arising out of accidents occurring: (a) while in or on buildings and other premises of the district during the time such students are required to be there; (b) while being transported by the district to and from school or other place of instruction, or (c) while at any other place as an incident to school sponsored activities and while being transported to, from, and between such places. (Education Code 49472)

7. PUPIL RECORDS: Parents and legal guardians have the right to inspect and review all official records, files and other data directly related to their minor child. Students 16 years of age or older, have the right to inspect and review all official records, files and other data concerning themselves (Education Code 49063) A charge of 25¢ per page will be made for copies of records.
Federal Law (HR-69) P.L. 93-380, Section 438, With Amendments & State Laws: Pursuant to the "Family Educational Rights and Privacy Act of 1943," this is to inform you of your rights regarding student records. The rights apply to the parents of minors, and to students age 16 or older or who have completed the 10th grade. Whenever reference is made to "parents" the rights and privileges provided to them are provided to the student when he/she turns 18. In summary, therefore, references are to "parents/eligible students." The rights of parents terminate on the student's 18th birthday except that when the student is a dependent as provided in Internal Revenue Sec. 152, Laws of 1954, the parents also retain access rights. (They must be providing over 50 per cent of the student's support.)

REV. 1978

7. PUPIL RECORDS (Continued): You may request an opportunity to inspect any and all official school records, files, and data related to your child (or yourself if you are 16 or over). The school has five days to respond to your request. If information in the file is inaccurate, misleading, or inappropriate, you may request removal of the information or include a statement disputing the material which you challenge.
Other provisions of the new Federal law restrict the people who have access to the information in student records. School personnel with legitimate educational interests, schools of intended enrollment, specified Federal and State educational administrators, or those who provide financial or student aid are entitled to access without your consent. Certain groups are permitted directory information without your consent, as well. Access may also be obtained without your consent pursuant to court order.

8. HANDICAPPED PUPILS; PRIVATE SCHOOL PROGRAMS: The School District is required to provide free appropriate special educational facilities and services to exceptional children. (Education Code 56030, 56033) Please contact the Director of Programs for Exceptional Children for further information.

9. TESTS/PERSONAL BELIEFS: No test, questionnaire, survey or examination containing any question about the pupil's or his parents' personal beliefs or practices in sex, family life, morality and religion, shall be administered to any pupil in kindergarten or grade 1 through 12, inclusive, unless the parent or guardian of the pupil is notified in writing that such test, questionnaire, survey or examination is to be administered and the parent or guardian of the pupil gives written permission for the pupil to take such test, questionnaire, survey, or examination (Education Code 60650)

10. ALTERNATIVE SCHOOLS: California state law authorizes all school district to provide for alternative schools. In the event any parent, pupil or teacher is interested in further information concerning alternative schools, the county superintendent of schools, the administrative office of this district, and the principal's office in each attendance unit have copies of the law available for your information. This law particularly authorizes interested persons to request the governing board of the district to establish alternative school programs in each district. (Education Code 58500).

11. STUDENT CONDUCT & DISCIPLINE: Pursuant to California state law, the Board of Education has adopted policies designating minimum district-wide standards of student conduct and regulations governing disciplinary action procedures to be used in schools throughout the District. The responsibility for fostering these standards of conduct is shared by Board members, administrators, teachers, supportive personnel, parents, and student alike. A pamplet summarizing these policies and procedures is distributed in connection with this notice and is available throughout the community.

12. FEDERAL LAW (Title IX) P.L. 92-318: Title IX regulations require that no person in the United States shall on the basis of sex be excluded from participation in, be denied the benefits of, or be subject to discrimination under any educational program or activity receiving Federal financial assistance. This requirement not to discriminate extends to employment practices by the district as well.

13. SIGHT AND HEARING TESTS: Upon first enrollment and every third year thereafter until the child has completed the eighth grade, the child's vision shall be appraised by the school nurse or other authorized person. This evaluation may be waived, if the parents so desire, by presenting a certificate from a physician, surgeon, or an optometrist spelling out the results of the evaluation. (Education Code 49455). The provisions of this section shall not apply to any child whose parents or guardian file with the principal of the school in which the child is enrolling a statement in writing that they adhere to the faith or teachings of any well-recognized religious sect, denomination, or organization and in accordance with its creed, tenets, or principles depend for healing upon prayer in the practice of their religion.

14. EXCUSE FROM HEALTH INSTRUCTION: Whenever any part in the instruction of health--family like education and sex education--conflicts with the religious training and beliefs or personal moral convictions of the parent or guardian of any student, the student shall be excused from such training upon written request of the parent or guardian. (Education Code 51240)

15. PRIVATE SCHOOLING FOR HANDICAPPED: Any handicapped pupil for whom a special education placement is unavailable or inappropriate may receive services in a private, nonsectarian school. Please contact the local director of special education for specific information. (Education Code 56031)

San Leandro Unified School District

RIGHTS and RESPONSIBILITIES:

- **PUPILS**
- **PARENTS**
- **TEACHERS**
- **ADMINISTRATORS**

A School Board Statement
on School Discipline

ADOPTED IN 1978

BOARD OF EDUCATION
David Dold
Mrs. Caroline Gessini
E. A. Johnson
N. Kleinstein
Mrs. Lois McDonald
Paul G. Meier, Sr.
Max Wilde
L. E. Holden, *Superintendent*

PACIFIC HIGH GRAPHICS DEPT.

The Board of Education & Pupil Behavior

The Board wishes to work cooperatively with students, parents, staff, and other persons in the community to develop policies for pupil behavior which will be in the best interest of all concerned.

The principal of each school is expected to insure that all students in that school are informed of these policies at the beginning of each school year, and that transfer students are so informed at the time of their enrollment.

This publication has been prepared to assist the Board and the principals to inform all concerned persons of these policies. (Education Code Sec. 35291)

GROOMING & DRESS POLICIES — All students are to maintain personal standards of dress and grooming appropriate to class and school activities. Footgear must be worn at all times — for reasons of health and safety. Bizarre clothing, costumes, or clothing that is too revealing, is not to be worn so that it will not create a distraction that will interfere with the educational process. A student who comes to school in violation of these policies will be sent home to prepare properly for school before re-entering.

DRUG/ALCOHOL POLICY — For the protection of all concerned, students are forbidden to use, provide, possess or be under the influence of drugs or alcohol while at school or any school activity. Violations of this policy will be reviewed by the District Administrative Drug Team, after the student has been suspended, to determine what further disciplinary action shall be taken. The San Leandro Police Department will also be notified.

DETENTION — Students may be detained for disciplinary or other reasons up to 1 hour after the close of the maximum school day.

CORPORAL PUNISHMENT — Personnel shall not administer corporal punishment to pupils.

SUSPENSION is the temporary removal or exclusion of a pupil from regular classroom instruction or from school as initiated by a teacher or administrator for adjustment purposes.

Students shall be suspended when other means of correction fail or when the student's continued presence is likely to be dangerous or disruptive to others.

Students may be suspended for:

1. Damage and/or theft of school or private property;
2. Causing, attempting to cause, or threatening to cause, physical injury by fighting or assault - except in self defense;
3. Possession or providing a dangerous weapon;
4. Possession, use, providing, or being under the influence of drugs or alcohol;
5. Possession or use of tobacco except as allowed by high schools with designated smoking areas;
6. Commission of an obscene act or habitual profanity;
7. Disruption of school activities;
8. Defiance of school authorities.

A student shall not be suspended for more than 5 consecutive school days. Suspension procedures include:

1. Informal conference with students to allow student the opportunity to explain his behavior and be advised of the reasons for suspension.

2. Parents given written and telephone notice of suspension within 24 hours.
3. Parents to attend conference within 72 hours.

Suspended students are allowed to complete and receive credit for all assignments and tests missed during the suspension which can reasonably be provided by the teacher. The pupil or parent/guardian have the right to appeal the suspension to the District Hearing Officer. Please call 577-3010 for information on such appeals.

EXEMPTIONS — Students may be exempted from the laws of compulsory school attendance, at the request of their parents, for various extenuating circumstances as defined by state law. Please call 577-3010 for information on requesting such exemption.

EXCLUSIONS — The Board of Education may exclude students from attending school for any of the following:

1. Filthy or vicious habits, contagious or infectious diseases including noncompliance with state immunization requirements.
2. Physical or mental disability as such to be detrimental to the welfare of other pupils.

EXPULSION is the permanent removal from enrollment in a school or the district as ordered by the Board of Education. Expulsion may be ordered by the Board when other means of correction have repeatedly failed or if the continued presence of the student causes danger to the physical safety of others. Pupils can be expelled only for those reasons for which they can also be suspended. State law provides for full due process and rights to appeal any order of Expulsion. Please call 577-3010 for further information on due process or appeals related to expulsions.

Rights and Responsibilities of Administrators

RIGHTS . . .

- To hold pupils to strict accountability for any disorderly conduct in school or on their way to and from school.
- To take appropriate action in dealing with students guilty of misconduct.
- Recommend suspension, exemption, exclusion and/or expulsion as the situation demands.

RESPONSIBILITIES . . .

- To provide leadership that will establish, encourage and promote good teaching and effective learning.
- To establish, publicize and enforce school rules that facilitate effective learning and promote attitudes and habits of good citizenship among the students.
- To request assistance from the Pupil Personnel Services Department in matters concerning serious instructional, behavioral, emotional, health or attendance problems.
- To grant access to pupil records by parent/guardian or others with proper authorization.

Rights and Responsibilities of Pupils

RIGHTS . . .

- To remain enrolled in school until removed under due process conditions as specified in the Education Code.
- To have access to records upon reaching the age of sixteen.
- To be informed in class of school rules and regulations.

RESPONSIBILITIES . . .

- To attend classes regularly and on time.
- To obey school rules and regulations.
- To respect the rights of school personnel and fellow students.
- To be prepared for class with appropriate materials and work.

Reading Program

Rights and Responsibilities of Teachers

RIGHTS . . .

- To expect students to behave in a manner which will not interfere with the learning of other students.
- To have parental support related to academic and social progress of students.
- To expect students to put forth effort and participate in class in order to receive a passing grade.

RESPONSIBILITIES . . .

- Informing parents through report cards and conferences about the academic progress, school citizenship and general behavior of their children.
- Conduct a well planned and effective classroom program.
- Initiating and enforcing a set of classroom regulations consistent with school and district policies.

Rights and Responsibilities of Parents

RIGHTS . . .

- To be informed of district policy and school rules and regulations related to their children.
- To be informed of all facts and school action related to their children.
- To inspect their child's records with the assistance of a certificated staff member for proper explanation.

RESPONSIBILITIES . . .

- To visit school periodically to participate in conferences with teachers or counselors on the academic and behavioral status of their children.
- Provide supportive action by making sure that children have enough sleep, adequate nutrition and appropriate clothing before coming to school.
- Maintaining consistent and adequate control over their children.
- To be familiar with district policies and school rules and regulations.

[redacted] SCHOOLS — "Back To School Information 1978-79"

Including legal notices required by the Education Code, etc.

WELCOME TO [redacted] SCHOOLS

Dear Parents:

[redacted] 1978-79 school year is about to begin (except for year-rounds which are always in session). All of us—the Governing Board, principals, teachers and other personnel—are looking forward to serving you and your child(ren) throughout the year. We are anxious to improve our communications with you. This pamphlet of essential information is part of that process.

Federal and State laws require schools to send certain notices to parents. Rather than send separate notices, we have included all the legal notices plus other information in this single pamphlet. It is our hope that you will carefully read the information now, then keep this pamphlet for reference throughout the school year. You are encouraged to share the information with your child, particularly those pages that discuss student rights, responsibilities and standards of behavior.

We, in the school district, very much want to have an open communications system with you, the parents. Whenever you need advice, additional information, or simply have a question to ask, the first place to contact is your child's school. The phone number is listed on page 2. After school hours, please call the 24-hour recorded answering service [redacted]. Your call will be returned during the next working day. If you still need additional information, please do not hesitate to call me.

This pamphlet will enable you to become better informed about many aspects of the schools. There is information about school calendars, report cards, lunches, insurance programs and the overall instructional goals for the district.

There are two immediate requests to you, the parents: (1) Please read the information in this pamphlet. (2) Please fill out the "Receipt of Required Legal Notices" on page 5. Then tear off the form and have your child return the form to his or her school. It indicates to us that you have received the required legal notices.

Let me restate that all of us in the [redacted] Unified School District are here to serve the children and youth of [redacted]. Please contact us if you have a problem, if you want to visit a school, or if you wish to volunteer some of your talents to working in the schools. I hope your child has a most successful and enjoyable school year.

Sincerely,

[redacted] Superintendent of Schools

STANDARDS OF STUDENT BEHAVIOR

> "It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."
>
> —Justice Abe Fortas

The Legislature has vested the Governing Board of the [redacted] Unified School District with the power and duty to adopt rules and regulations for the government and discipline of schools under its jurisdiction, to prescribe the course of study, and to maintain at all times effective control of students in order to carry out successfully the purposes of education. Students may be severed from attendance at the public schools for violations of laws and reasonable rules and regulations.

The Governing Board, realizing its obligation to provide for the community the best possible educational program for all its citizens, has adopted the following policies pertaining to standards of student behavior, when under the jurisdiction of school personnel.

I. **ATTENDANCE:** Students shall attend school regularly and shall be punctual in their attendance.

II. **APPEARANCE:** Students shall be neat and clean. They shall observe modes of dress, styles of hair, and standards of grooming (including the use of cosmetics) considered to be appropriate for their sex, age level and school activity and in conformity with the studious atmosphere desirable and necessary in a school. The above standards shall be determined by the school principal or his delegated authority.

III. **CONDUCT:** Students shall respect the authority of all school employees. They shall abide by school rules and regulations and the laws which apply to conduct of juveniles or minors. Students shall respect the rights and privileges of their fellow students. Students shall maintain high personal standards of courtesy, decency, morality and honesty. They shall use acceptable language at all times.

Students shall conduct themselves in such a manner that the safety of fellow students and school employees will not be endangered. They shall be responsible for the protection and preservation of school property.

IV. **SCHOLASTIC PROGRESS:** Students shall exert reasonable effort and shall make reasonable progress in their studies, commensurate with their abilities.

REGULATIONS AND PROCEDURES CONCERNING UNACCEPTABLE BEHAVIOR

I. **GENERAL REGULATIONS:** One way we encourage students to accept full responsibility of good citizenship is to inform them of their legal rights and responsibilities. Students are expected to comply with the policies adopted by the Governing Board which are based on the California Education Code and other pertinent State laws. These regulations apply to students in attendance at any school sponsored function, whether it be on their own school grounds or elsewhere.

Principals, teachers and other school personnel, in attempting to resolve the problems of students, shall use any resources, services and records which are available to them. The schools shall maintain documented records of deviant behavior of students (1) as a means of helping in their guidance; (2) as a record for parental conferences; (3) as information for authorized agencies; and (4) for supportive evidence where suspensions, exclusions, expulsions, or exemptions may become necessary.

REMINDER: FILL OUT FORM ON PAGE 5 AND HAVE YOUR CHILD RETURN TO HIS OR HER SCHOOL.

Standards of Student Behavior. . . Con't.

The schools shall solicit the interest and cooperation of parents and guardians in working on problems affecting their children. The schools shall make reasonable effort to inform them of unacceptable behavior involving their children.

No elementary student shall be sent home during school hours until a designated parent, guardian or other authorized person has been notified by telephone or written communication.

II. **ACTIONS TO DENY THE RIGHT OF ATTENDANCE:** When a student becomes unmanageable, or if conditions exist which require removal of the student from school or which render continued attendance in school inadvisable, the school may resort to suspension, exemption or expulsion. A partial list of causes for such measures follows:

• Excessive or unwarranted absence or tardiness after being directed to attend school regularly. • Use, possession, supply or sale of tobacco, intoxicating liquor, narcotics or hallucinogenic drugs on school grounds. • Acts of intimidation, extortion, or assault and battery. • Stealing, lying, or cheating on examinations or other school work. • Gambling on or near school grounds. • Lack of respect for the rights, privileges and property of other students and school employees. • Obscene or degrading language, writing or pictures. • Using weapons or having weapons in possession. • Willfully damaging, destroying, or defacing school property or property of individuals on or adjacent to school grounds. • Habitual insubordination and disorderly conduct or continued willful disobedience, open and persistent defiance of the authority of school personnel, or habitual profanity or vulgarity. • Fighting, or instigating a fight, on the school grounds.

Methods of Readmittance: Students who have been excluded, expelled, or exempted may be readmitted only through the approval of the authorities who were officially responsible for their termination of enrollment. As a condition of readmittance, students and their parents may be required to indicate, in writing, their willingness to accept and support these Standards of Student Behavior.

FOR MORE INFORMATION, CALL STUDENT PERSONNEL SERVICES — [redacted]

FOUR WAYS TO GET FAST ACTION

1. **Call the Principal of Your Child's School:** The principal is ready and willing to answer questions and respond to rumors. If necessary make an appointment for a conference with the principal and other members of the school staff.

If you can't reach the principal during regular school hours use the "Dial Your Schools" number listed below. We will return your call the next working day and phone you at work if you like.

2. **Help Us Identify Persons Who Have Violated School Rules:** If your child has been harassed, contact the principal immediately. Identification of the other student(s) is of greatest importance. The principal cannot take disciplinary action unless he knows who to discipline. You, after consulting with the principal, can decide if the matter should be referred to other agencies.

3. **Help Us Stop Rumors—Dial Your Schools,** [redacted] Don't be part of rumors. Call the 24-hour recorded answering service to get answers or to alert school officials to a potential problem.

4. **Call the Superintendent—**[redacted] The Superintendent is always willing to talk with parents. If you have not discussed the matter with the principal you will be encouraged to do so because problems are best solved at the school level. The secretary will be pleased to schedule an appointment for you.

LEGAL NOTICES

SCHOOL LUNCH PROGRAM

The [redacted] Unified School District services nutritionally well-balanced meals every school day to secondary, elementary, kindergarten and pre-school/child care students. Meals are provided at no charge as part of the pre-school/child care program. Students of kindergarten through twelfth grade may purchase a daily lunch ticket at the following rates:

	Kindergarten	Elementary	Junior High	Senior High	Adult
Lunches w/milk	55 cents	55 cents	60 cents	60 cents	1.00
Breakfast w/milk	30 cents	30 cents	no program	no program	.50
Reduced-price lunch w/milk	10 cents	10 cents	10 cents	10 cents	—
Reduced-price breakfast w/milk	10 cents	10 cents	10 cents	10 cents	—
Milk — 1/2 pint	10 cents	10 cents	10 cents	10 cents	.15

Children from families whose income is at or below certain levels are eligible for free milk and meals or can purchase them at the reduced rates. If you have high medical bills, shelter costs in excess of 30 percent of your income, special education expenses due to the mental or physical condition of a child or disaster or casualty losses, your children may be eligible even though your income is greater than the minimum set by law.

More detailed information about this program along with an application for Free and Reduced-Price meals and an eligibility scale will be sent to all parents at the beginning of the school year.

FOR MORE INFORMATION, CONTACT THE SCHOOL PRINCIPAL OR CALL [redacted] SUPERVISOR,
STUDENT WELFARE AND ATTENDANCE — [redacted]

INSURANCE COVERAGE

The [redacted] Unified School District does not provide medical or dental insurance to pupils injured on school premises through school activities. However, parents can purchase insurance for their children from the local office of Mutual of Omaha Insurance Company and its life insurance affiliate, United of Omaha, through [redacted]

Under state law, it is required that any student taking part in interschool athletic events—team members, band members, yell leaders, drill team members, and team managers—must carry a policy of insurance with minimum coverage of $1,500 for accidental death and $1,500 for medical and hospital expenses. The policy offered will fulfill this requirement for all except competitors in tackle football.

The Mutual of Omaha Insurance Company plan does not cover students for injury as a result of operating, riding in or upon, or alighting from a two- or three-wheel motor vehicle or any form of skiing. The increasing number of such injuries is the reason for this exclusion.

An application form and a brochure explaining details about benefits, provisions, and exclusions of the policy will be sent home from the school. Parents desiring the coverage should complete the application, place the premium in the envelope provided and return the sealed envelope to their child's teacher. Please keep the brochure for your own information. The coverage will insure your child for the 1978-79 school year, including summer school in 1979.

Period of coverage starts from date your insurance application reaches the school This plan provides accident insurance for school pupils at moderate cost. While this plan is voluntary (for those students not participating in athletic events), you will undoubtedly want to consider taking advantage of this service.

FOR MORE INFORMATION, CALL [redacted]

PUPIL RECORDS — PARENTS' RIGHT TO INSPECT RECORDS

In the course of your son's or daughter's education, the school district will keep records as deemed necessary to meet your child's needs and interests. Such records are: • Enrollment information including birth and residence statistics and family background. • Cumulative record of test scores, grades, courses of study, and disciplinary notations. • Attendance and health records. • Records required for admission to, and progress in, special education programs. • Teacher observations and recommendations in regard to educational programs and student progress and development.

The Family Education Rights and Privacy Act of 1974, with amendments, and the Education Code of the State of California, confirm parents' rights to review their children's educational records of students eighteen years of age or older as long as they are students and are claimed as dependents for income tax purposes. You may review these records at any mutually convenient time during the regular school day. If, after review, you have any concern regarding the accuracy or appropriateness of any record, please do not hesitate to inform the school principal of your concern. You have the right to request that consideration be given for amendment or removal. (E.C. 49063)

FOR MORE INFORMATION, CALL SPECIAL SERVICES — [redacted]

PUPIL RECORDS — DIRECTORY INFORMATION

According to the law, school districts may release what is termed "directory information" regarding any current or former student.

Directory information is defined as containing not more than the following: • Student's name and address. • Telephone number. • Date and place of birth. • Major field of study. • Participation in officially recognized activities and sports. • Weight and height of members of athletic teams. • Dates of attendance. • Degrees and awards received. • Public or private school most recently attended by the student.

This "directory information" is legitimately released to such organizations as the P.T.A., recruiting officers for the Armed Services, perspective employers, or representatives of the news media.

If you do not want directory information on your child distributed, you must contact your child's school within 30 days of receipt of this pamphlet and tell the principal to take your child off the school's list of directory information. (E.C. 49073)

FOR MORE INFORMATION, CALL SPECIAL SERVICES — [redacted]

TITLE IX — NON-GENDER DISCRIMINATION

As part of [redacted] Unified School District's program to provide a quality education for all of its students, we are implementing a policy of non-discrimination on the basis of gender. This policy is in compliance with Title IX of the Federal Education Amendments of 1972. Our policy is another step toward our goal of providing each person with an equal opportunity to have the kind of education necessary for a successful future.

This Board policy, #4110, adopted July 6, 1976, states: "It is the policy of the Governing Board not to discriminate on the basis of gender in its education programs and activities."

FOR MORE INFORMATION, CALL [redacted]

REMINDER: FILL OUT FORM ON PAGE 5 AND HAVE YOUR CHILD RETURN TO HIS OR HER SCHOOL

CORPORAL PUNISHMENT

Corporal punishment (spanking) shall not be administered to a pupil without the prior written approval of the pupil's parent or guardian. This approval, when given, shall be valid for the school year in which it is submitted but may be withdrawn at any time. When agreed to by the parent or guardian and determined to be necessary to school pesonnel, this type of punishment will be administered in a controlled manner, in private and with at least one other adult school employee present (E.C. 49001)

FOR MORE INFORMATION CALL THE PRINCIPAL

STUDENT PROGRESS REPORTS

Elementary School: Both parent conferences and written reports are used to report student progress at elementary schools. Parents are urged to contact the school principal for specific information regarding details of the reporting system at their child's school.

Secondary Schools: Students in grades 7 through 12 are graded every six or nine weeks The reporting dates vary with each school.

FOR MORE INFORMATION CALL THE PRINCIPAL

BILINGUAL EDUCATION

The United States Office of Education and Office of Civil Rights require that school districts provide equal educational opportunities for all children, One aspect is to ensure that children who come from non-English speaking homes and/or children who have limited English speaking abilities have an equal opportunity for learning success. This requires districts to offer one or more forms of bilingual programs as part of the total education program, Consequently [redacted] district will continue its English As A Second Language Program, its tutorial assistance, and will offer some programs where subject matter is presented bilingually

Parents are notified that their child is eligible for a bilingual program Parents have the right not to have their child enrolled in such a program if they so desire Notices sent home include a description of the course, an invitation to visit the class a schedule of parent conferences to explain the objectives of the course and the fact that parents can participate in the school and/or district advisory committee if they so desire. (E C. 52173)

FOR MORE INFORMATION CALL THE PRINCIPAL

MULTI-CULUTURAL EDUCAITON AND ARTICLE 3.3

The [redacted] Schools have a long tradition of continuing multi-cultural awareness studies in its curriculum. The goal of multi-cultural education is to enhance self-image and to develop positive relationships between and among the various racial, ethnic, and nationality groups that make up this great country.

The State of California has enacted Article 3.3 of the Education Code to enable school districts to do a better job of multi-cultural education. Article 3.3 requires school districts to provide in service training programs for all certified personnel in each school where 25% or more of the pupils are minority That is virtually every school [redacted] The [redacted] district will offer a district-wide program. It is the intent of the district to encourage parents to participate in these programs both as learners and as teachers.

FOR MORE INFORMATION CALL [redacted]

PARENT NOTIFICATION OF PROGRAM OFFERINGS

As required by law (Education Code Section 48980-84) the School Board hereby notifies parents and guardians of their right to permit or refuse to have their child(ren) participate in the classroom instruction and school activities listed below Programs planned for the 1978-79 school year are starred (*).

*1 **Family Life Education:** The program called the "Human Growth Program," is part of the curriculum at elementary schools. At junior and senior high schools the program is offered as part of other regularly scheduled classes This code section does not apply to words or pictures in any science, hygiene or health book

Whenever new courses are planned. parents will be notified of their rights to inspect and review pertinent written or audio-visual materials prior to the holding of the course

Written parental consent is not required by law, but a written objection will be honored and your child will not attend. (E.C. 51550)

*2. **Venereal Disease Education** is offered at secondary schools in conjunction with other regularly scheduled classes. Schools will notify parents prior to instruction as stated in item 1 above. (E C. 51820)

3. **Excuse from instruction** in the areas covered in items 1 and 2 above due to religious beliefs (including personal moral convictions): Pupils shall be excused upon receipt of a written request from the parent or guardian only. (E.C. 51240)

*4. **Immunization for communicable disease** may be offered in conjunction with the [redacted] County Health Department for all students. Parents will be asked to give their permission in writing prior to a licensed physician administering any immunizing agent. (E.C. 49403)

*5. **Administration of medication** prescribed by a physician for a child during the school day may be done by a nurse or other designated school personnel under detailed instructions but only upon written parental request (E C 49423)

In addition, parents are required to inform the school nurse or other designated certificated employee of the type of medication, current dosage, and the supervising physician if their child is taking continuing medication (E.C 49480)

*6 **Physical exams** are not offered by [redacted] Schools. Parents are encouraged to use their family physician. However, school nurses help identify contagious and infectious diseases and notify parents when necessary A child may be sent home if he is believed to be suffering from a recognized contagious or infectious disease

All children entering kindergarten and first grade must present a certificate to the school, signed by a doctor, stating that they have received a health screening examination. Parents may sign a form stating that their children have received a health screening examination, or may sign a form stating that they do not wish their children to receive this examination. (E C 49451)

7 Evaluation of vision and hearing of a child, by the school nurse, or teacher, if authorized, are completed upon first enrollment and at least every third year thereafter. The evaluation may be waived upon presentation of an appropriate certificate from a physician or optometrist. (E.C. 49455)

*8 **Medical or hospital services** for pupils injured at school-sponsored events or while being transported may be insured at district or parent expense (E.C. 49472)

*9. **Released Time for Religious Instruction** is possible for students at a place away from school property and after the pupil has attended school for a minimum day. (E.C. 46014)

If you do not want your child to participate in specific programs listed above (*), please state your objections in writing and send the letter to the school principal.

FOR MORE INFORMATION, CALL STUDENT PERSONNEL SERVICES [redacted]

REMINDER: FILL OUT FORM ON PAGE 5 AND HAVE YOUR CHILD RETURN TO HIS OR HER SCHOOL

AFFIRMATIVE ACTION POLICY

In accordance with the laws of the State of California it is the policy of the [redacted] Unified School District to provide equal opportunities for employment, retention and advancement of all people regardless of , ethnicity, creed, national origin or sex. Furthermore, the district will establish and maintain a positive and effective affirmative action program. The goal of such a program will be to achieve an ethnic, racial and sexual balance among its employees which reflect the make-up of the school and city environments.

The purposes of the policy and the program are: 1. To provide all students with an opportunity to relate to and learn with members of various racial and ethnic backgrounds and to increase knowledge and enhance inter-cultural understanding. 2. To have success models of the same race, sex and ethnic background as is represented in the student body. 3. To insure equal opportunities for the employment, promotion and transfer of all persons.

All policies, rules and regulations and programs of the district conform with the affirmative action policy. (P4110)

[redacted] Director of Personnel, is the Affirmative Action Officer for the district.

Legal Reference: Executive Order 11246, Higher Education Act of 1972 Title IX, Education Code 13274.

FOR MORE INFORMATION, CONTACT THE PERSONNEL OFFICE — [redacted]

FOR PARENTS WITH HANDICAPPED CHILDREN

The Education For All Handicapped Act (Public Law 94-142) requires that school districts inform the parents of handicapped children of the due process procedures relating to identification, evaluation and educational placement of handicapped children. The minimal due process procedures guaranteed to handicapped children and their parents are listed below.

Parents will be provided with written notice prior to any decision related to identification evaluation or educational placement of their child.

Parents will have the opportunity to respond to the notice and to present complaints related to the decision.

Parents will be given the opportunity for an impartial due process hearing to review and challenge all evidence. A record of these proceedings is required to be made available to parents. The burden of proof as to the recommended action must be borne by the school district and those individuals making the recommendation.

Parents may examine records of identification, evaluation and placement and obtain an independent evaluation of their child.

If parents are dissatisified with the decision made relative to their child's educational needs they may appeal this decision in writing to the Superintendent. The final authority in such matters is the State Superintendent of Public Instruction in Sacramento.

Parents also have the right to apply for special educaiton tuition payments when the district cannot provide the appropriate special education program. Education Code Sec. 56031 and California Administrative Code (C.A.C.) Title 5, Sec. 3121.

FOR ADDITIONAL INFORMATION, CALL SPECIAL SERVICES [redacted]

HOW TO REGISTER YOUR CHILD AND LEARN ABOUT INSTRUCTIONAL PROGRAMS

- **Pre-School Education (age 2 yrs. 9 mos. to 4 yrs. 9 mos.):** [redacted] The district operates two pre-school programs both offering an educational program for young children and their parents. One program offers child care services with fees depending on income. Some parents with low income are eligible for reduced rates. Parent participation and education is stressed.
- **Elementary Education (Kindergarten to Grade 6):** [redacted] Give the secretary your address and she will tell you which school(s) your child(ren) will attend. All incoming students to [redacted] Schools are required to present, at the time of registration, a birth certificate and verification of polio, measles (Rubella), CPT (Diphtheria, Pertussis and Tetanus) and Whooping Cough immunizations.
- **Secondary Education (Grades 7 to 12)** [redacted]. Give the secretary your address and she will tell you which junior or senior high school your child(ren) will attend. Phone the school for more detailed registration information or to make an appointment with a counselor.
- **Special Education (All Grades)** [redacted] The district offers programs for exceptional students who are physically and educationally handicapped, mentally retarded and mentally gifted. The classes are offered at locations throughout the district and transportation is provided.
- **Adult Education:** [redacted]. The school offers many opportunities to learn for personal improvement and/or a high school diploma. Any person 18 years of age or older can register for adult classes.

TEAR TEAR TEAR TEAR TEAR TEAR TEAR TEAR TEAR TEAR TEAR TEAR TEAR TEAR TEAR TEAR TEAR

"Receipt of Required Legal Notices"

[redacted] UNIFIED SCHOOL DISTRICT

I have been notified of my rights as listed in the Education Code Sections 46014, 48980-84, 49001, 49063, 49073, 49403, 49423, 49451, 49455, 49472, 49480, 51240, 51550, 51820, 52173, 56031, Public Law 94-142, Article 3.3, Title IX, CAC—Title 5, Sec. 3121.

Parent's Signature ______________________________

Student's Name, Grade, School ______________________________

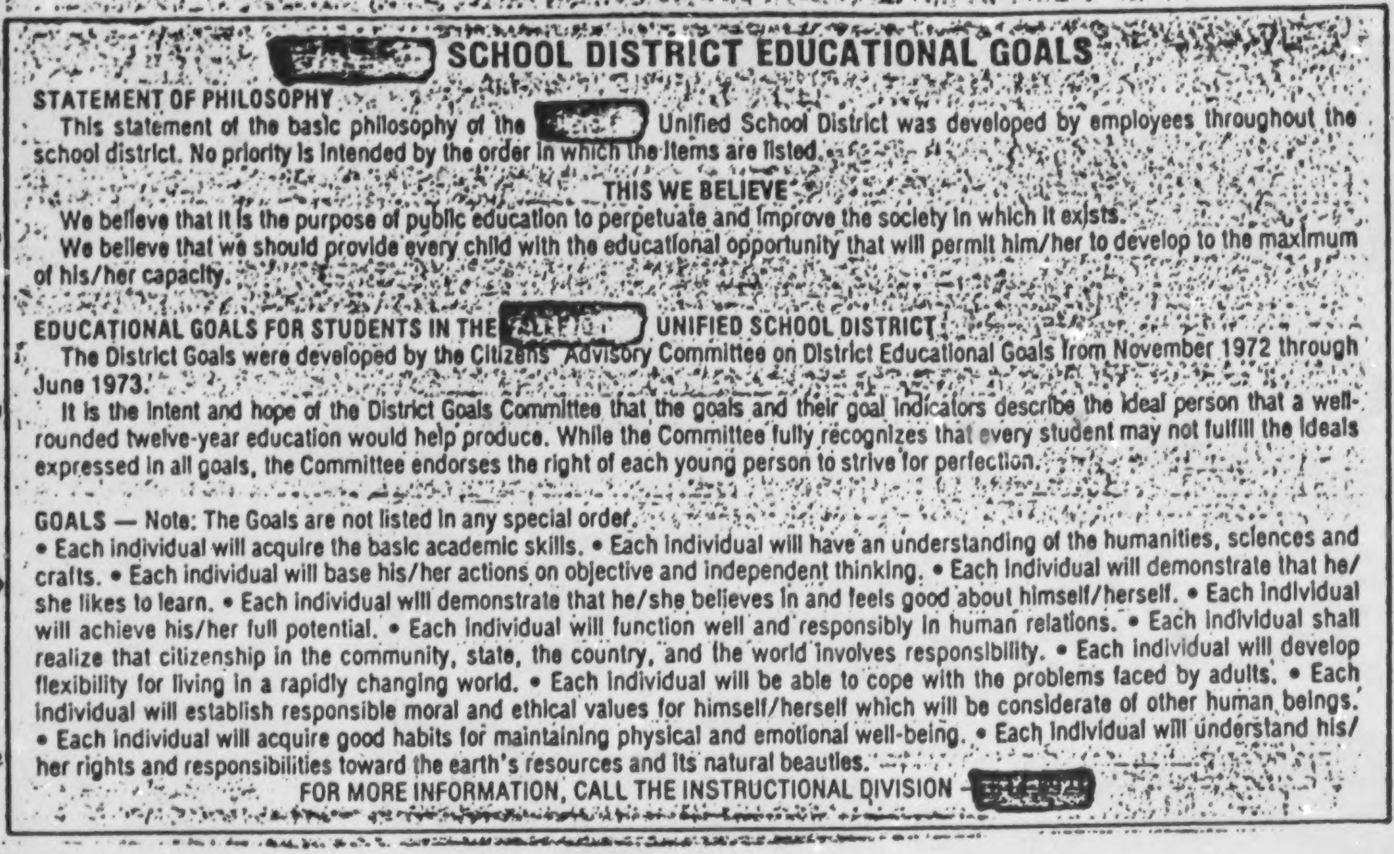
____

Did you find the pamphlet informative? ☐ Yes ☐ No

How could the pamphlet be improved? ______________________________

____

____



[redacted] SCHOOL DISTRICT EDUCATIONAL GOALS

STATEMENT OF PHILOSOPHY

This statement of the basic philosophy of the [redacted] Unified School District was developed by employees throughout the school district. No priority is intended by the order in which the items are listed.

THIS WE BELIEVE

We believe that it is the purpose of public education to perpetuate and improve the society in which it exists.

We believe that we should provide every child with the educational opportunity that will permit him/her to develop to the maximum of his/her capacity.

EDUCATIONAL GOALS FOR STUDENTS IN THE [redacted] UNIFIED SCHOOL DISTRICT

The District Goals were developed by the Citizens' Advisory Committee on District Educational Goals from November 1972 through June 1973.

It is the intent and hope of the District Goals Committee that the goals and their goal indicators describe the ideal person that a well-rounded twelve-year education would help produce. While the Committee fully recognizes that every student may not fulfill the ideals expressed in all goals, the Committee endorses the right of each young person to strive for perfection.

GOALS — Note: The Goals are not listed in any special order.
• Each individual will acquire the basic academic skills. • Each individual will have an understanding of the humanities, sciences and crafts. • Each individual will base his/her actions on objective and independent thinking. • Each individual will demonstrate that he/she likes to learn. • Each individual will demonstrate that he/she believes in and feels good about himself/herself. • Each individual will achieve his/her full potential. • Each individual will function well and responsibly in human relations. • Each individual shall realize that citizenship in the community, state, the country, and the world involves responsibility. • Each individual will develop flexibility for living in a rapidly changing world. • Each individual will be able to cope with the problems faced by adults. • Each individual will establish responsible moral and ethical values for himself/herself which will be considerate of other human beings. • Each individual will acquire good habits for maintaining physical and emotional well-being. • Each individual will understand his/her rights and responsibilities toward the earth's resources and its natural beauties.

FOR MORE INFORMATION, CALL THE INSTRUCTIONAL DIVISION — [redacted]

2528C 7/29/82

CHAPTER 4

MODELS OF INFORMATION DISCLOSURE

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CHAPTER 4.

MODELS OF INFORMATION DISCLOSURE

This chapter has four themes. (1) We describe a variety of contexts in which information generally is valuable to ordinary people. (2) We illustrate why people are not assured of sufficient information merely because government undertakes to provide its citizens a general education. (3) We explain potential roles for government in providing information, arranging for its disclosure, or otherwise responding to consumer problems. (4) We demonstrate how commonly America in fact turns to government to promote an informed population on all sorts of matters. Together these themes provide a context for and the analytic touchstones and analogies for possible information disclosure requirements regarding pupil sorting in public education. The discussion of the themes runs throughout the chapter which is divided into two main parts: Informed Choice and The Citizen's Right to Know.

1. Informed Choice

The organization of American society for the most part reflects a strong belief in individual autonomy -- the freedom to make choices for oneself. Our main social institutions, including our economic system, are organized to an important degree to further human liberty. A normative defense of our "market" system for distributing some choices which for them are wrong. Put another way, however, choosing without full information is simply part of the constrained personal welfare maximizing all of us engage in when deciding which goods and services to pursue. Thus, just as we are not infinitely wealthy, we are not omniscient either; our welfare maximizing must go on subject to both these constraints (as well as others). Whether this insight makes the perfect market model incoherent or naively idealized, or whether the information cost problem is readily integrated into the classical theory is an unresolved issue in microeconomics that need not worry us here. Rather, we will explore some reasons why relying on private information provision will not produce an appropriate amount, even considering its cost.

With respect to many aspects of our lives, we are provided information about the choices we might make without any direct cost to us apart from the time it takes to absorb the information. We are speaking here about the world of advertising. No one should have the illusion that this provision of information is costless to consumers, however. Plainly, if producers of advertised goods and services are to make the profits necessary to attract capital to their enterprises, they will have to pass on the costs of advertising to their consumers.

On the whole, this seems just. Those who choose the product or service have most likely benefitted from the information conveyed by the advertising; and now they pay for it. Of course, there isn't a perfect fit. Some would have bought without the advertising and would have preferred a lower price; yet, as they are willing to pay the higher price, they simply get less of a good deal than they might have otherwise. Others, however, don't buy since the price for them is now too high; they shift demand to unadvertised substitutes or other things entirely. This threat, of course, serves to restrict advertising expenditures.

Others benefit from advertising by finding out that, say, despite prior predilections they now don't want the service or product after all. However, they escape any charge for this increase in their well being, even if they would have been willing to pay for it. This risk is like many other "positive externalities" of life in which X does something for his own benefit which spills over and gratuitously benefits Y (I see your beautiful garden). Although these "free riders" are not thought evil for avoiding payment for their windfall, the fact of free riding does create problems in optimizing the flow of information in our society: awareness of their inability to charge free riders causes advertisers to hold back in communicating information for which consumers are in fact willing to pay.

In sum, as illustrated above, in addition to price competition from non-advertized substitutes (e.g., house brands v. brand names), the advertiser is constrained (1) by the demand pressures of customers (say, satisfied repeat buyers) who inevitably become some of the targets of the advertising but who have no use for it, and (2) by advertiser's inability to recoup costs from targets who will never buy, many of whom nonetheless benefit from the information. Thus, even though great efficiencies can be gained from tying the payment for the information to the purchase of the item, there is reason to doubt that tied advertising will provide to individuals just the amount of information they prefer.

Moreover, the qualify of information provided through advertising is also suspect. Advertisers, of course, will seek to promote the positive aspects of their products, and they have strong incentives to capitalize on whatever psychological vulnerabilities their potential consumers might have in a situation, as we've explained, of necessarily incomplete knowledge. Moreover, advertisers may well be unwilling to pay to attack the shortcomings of competitors, if for no other reason than the fear that this negative image might rub off on them or on the product or service in question generally. (Imagine doctors publicly emphasizing the incompetence of others, or a step ladder maker touting the dangers of others). This reluctance can deprive consumers of desired comparative data. Nor, of course, is it unknown for sellers to engage in deceit; misrepresentation by giving consumers the wrong information, of course, interferes with personal welfare maximizing.

Non-competitive industries too produce inefficient levels of advertising. Professionals such as lawyers, through cartels in the form of bar associations, for years had refrained from advertising, especially price advertising. This led to the claim that inadequately informed consumers of legal services paid too much for simple advice. At the other end, it is sometimes charged that oligopoly in the cereal industry allows and accounts for the "wasteful" pursuit of market share through excessive advertising that most consumers find unhelpful. In sum, for a variety of reasons goods and services providers themselves can not be counted on to provide information efficiently.

Information, of course, need not be provided only by the providers of the goods and services themselves. An independent "market" in information can, and does, exist. Consumer Reports, travel guides and investment advice books are but some prominent examples. It might be argued that the "test" of consumer demand for information beyond that "freely" provided by sellers is to be measured by whether a market for additional information actually develops. On this view the absence of a commercial offering of consumer information suggests that it costs more than consumers are willing to pay to gather and disseminate information beyond that which consumers "naturally" obtain from alternate sources. Put differently, whatever advertising, word of mouth and self education fail to provide, commercial information providers, it will be argued, can supply -- up to the efficient level of information demanded.

This argument is flawed, however. Any information market itself will be imperfect. Again the free rider problem is an important source of the difficulty. The legal system and human ingenuity, although partially effective, are simply not up to providing full protection to what lawyers call "intellectual property." Copyright law, for example, and its elaborate royalties system is one such attempt, but one which is coming under great pressure from photocopying machines, tape recorders and the like.

Put simply, just as with tied advertising, it can be very difficult for sellers of information to extract a charge from each of those who see or otherwise benefit from the information. For example, friends can and do pass on information to each other; or competitor information providers can "steal" your data and ideas and market them as their own. These "leaks" can be especially devastating for someone whose only product is the information itself. For these sorts of reasons the market in information may be underdeveloped. Hence, while consumers at the outset would be willing to pay enough to make it worthwhile for producers to make S information available, inability of producers to control their product would let free riders get S information for less. This prospect, in turn, causes providers to retrench and provide only S minus X, (perhaps representing what they can better protect or more cheaply obtain) or else to withdraw from the market altogether. Thus it can be seen how the free riding potential can make society "worse off" -- that is, lead to inefficient under production of information.

Often when this happens, or is likely to happen, we have what is called a "public goods" problem. A public good is one characterized by either non-rivalry or non-excludability (or both) in consumption. Non-rivalry means that one person's consumption of the good does not decrease the supply of it available to others. Non-excludability refers to situations in which it is not practicable to exclude non-payors from enjoying the benefits of the good. Market provision leads to inefficient underproduction of the public good, and some collective action is required to improve the situation.

National defense is a classic example illustrating both properties. Imagine trying to provide national defense through a market system. Once national defense is provided to someone, others may enjoy the same national defense at no extra cost (non-rivalry). Therefore, it would be inefficient to exclude the others from the benefit even if exclusion were possible. But because it is impossible to exclude the others, market provision will result in too little national defense: there would be too many free riders who would not reveal their true willingness to pay, and private suppliers would be unable to collect the revenues necessary to provide the efficient amount of national defense. Thus we rely on government to provide national defense. Other examples of public goods include parks, lighthouses, and information itself.

Of course, when government engages in the supply of public goods (e.g. builds parks) or through regulation requires private parties to so provide them (e.g. conditions subdivision development on the inclusion of parks), there is still the difficult problem of charging (or otherwise making bear the costs) those who actually want and are willing to pay for the benefits. Moreover, it can often be debated whether the matter at issue really is a public goods problem, or at least what are its precise dimensions. And, of course, if the object of collective action is conceived to be that which a perfect market would produce, there can be great debate over just what that outcome would have been. All of these issues form the meat of much day-to-day politics. (Public choice economists are continually working on devices or processes other than ordinary local politics designed to get people to reveal their true preferences in these matters -- with little practical success to date.)

Interestingly enough, information provision is something that the non-profit sector has taken up as its mission in a variety of settings. Consumers Union, publisher of Consumer Reports, is a non-profit organization itself. Churches, the YMCA, and similar groups plainly see providing information as an important function of theirs. Many communities have non-profit information and referral agencies designed to connect consumers to social services of various sorts. Non-profit groups that take on these roles presumably conclude that consumer information otherwise provided by the market is inadequate, and that providing such information is a valuable use of their members' and donors' funds.

In any event, despite these supplemental efforts, for many years governments at all levels have been asked, in the name of consumer sovereignty, to add to whatever information comes from private sources by (a) directly providing information, (b) regulating private disclosure and/or (c) requiring the private disclosure of information. And in many instances consumer advocates on behalf of disclosure have won. As a result, in many areas of our lives information is now provided to consumers either by government itself or in conformity to government direction. This is not to say that the public disclosure programs actually provide benefits that are worth their costs, or, on the other hand, that they actually wind up requiring anything that wouldn't have been provided anyway. Those issues of effectiveness will be examined later. For now the point is that our society has often turned collectively to information disclosure strategies as a means to improve the process of personal choice. (Sometimes, it may be fair to say, the threat of collective action with respect to information prompts private disclosure designed to forestall regulation. Motion picture industry ratings may be an example of this.)

Many collective efforts requiring disclosure are well known. For example, truth-in-lending is a program designed, at least in part, to assure that borrowers are aware of the true interest rate they will pay on a proposed loan. The collective strategy here, it seems, is to help consumers both to shop among lenders and to better decide whether the cost of the money is too high; without such disclosures it is feared that borrowers will both pay too much to individual lenders and pay more than they realize or are genuinely willing to pay for the thing for which they are using the loan proceeds. Disclosure here may be seen as well to serve the psychological value of helping consumers feel confidently knowledgeable about financial transactions they enter into. Similar stories could be told about prospectuses issued as a condition of the sale of new securities and labels put on food and drugs -- all at the bidding of government.

Another sort of example is illustrated by the federal government publication during the Carter Administration of "The Car Book" which contains a great deal of comparative information on automobiles. (Interestingly enough, the Reagan Administration objected to some of the information and halted its dissemination.) In this same vein public agencies also publish information they have generated on items such as tire quality, cigarette tar levels, auto fuel efficiency and the like; and sometimes agencies require advertisements of these products to carry the results of the government tests.

One reason for the latter strategy is that the government can piggy back on existing private advertising efforts without the expense of having to develop its own "ad campaign." (Besides this way the government message is delivered along with the private one.) And it is well recognized that the costs of direct government to consumer education efforts can be very substantial. Another "money saving" strategy is to spread the costs among airwave users and owners by requiring "public service" spots and the like as a condition of radio and TV broadcasting licenses. Probably because of this set of rules, more public service consumer information messages get on the air. Print media too is enlisted in government information campaigns, such as when the Consumer Product Safety Commission issues a press release containing safety tips on skiing, bicycling and the handling of matches.

Until this point, we have been using examples which assume that the consumer is perfectly capable of making "satisfaction-maximizing" decisions if only given the proper information. However, it is important that we recognize the limits on individual abilities to process available information in order to calculate which decision is best for them. The truly rational individual will recognize these limits, and in certain circumstances will not want to decide; rather he will perfer to delegate the actual decision-making to an expert. In such cases, information provision to the consumer will not fix the market failure. Two examples will suffice.

Certain consumer products may contain hazards which individuals do not understand. For example, before 1973 it was common for baby cribs to be made with slats about 3.5 inches apart. Infants tended to dangle their feet between two slats, and each year a significant number of babies died because they slipped down and were strangled. While this is a serious problem, parents could not be expected to perceive it. Each parent has only very limited experience with crib-consumption and is unlikely to know the relatively few families who are the victims of these tragedies (or the precise reason for their cause).

The problem was first identified in 1968 by the President's Commission on Product Safety. One could imagine trying to solve it by providing information: "Warning: an infant in this crib has one chance in 20,000 of accidental death from strangulation between the slats." But not all consumers would understand this information about a seemingly remote and abstract event, and the consequences of not understanding it can be catastrophic. Moreover, it is hard to see why rational parents would want to run even that small risk if it could easily be reduced or eliminated. Therefore, an alternative strategy to providing information is for consumers to delegate some of their sovereignty to a group of experts -- here the Consumer Product Safety Commission (CPSC) -- and give them the power to ban certain hazardous products from the marketplace.

In the case of the baby cribs, the CPSC required manufacturers to leave no more than 2.375 inches between slats (effectively banning cribs with wider spacing). This spacing protects 95% of all infants and adds only a minimal cost. Similar reasoning can be used to understand the delegation of some consumer sovereignty to other experts who make collective decisions for all of us: e.g., the Federal Aviation Authority, the National Highway Traffic Safety Administration, and the Food and Drug Administration.

In the above example, the expert decision about which cribs to allow on the market was not hand-tailored to take account of each consumer's personal circumstances (e.g., whether the infant is large or small, which affects the risk of an accident). But in other situations, the consumer's problem may be one for which individual attention is appropriate. An example of this is medical care. Again, the truly rational consumer knows that he or she does not know enough to choose the correct treatment in response to symptons of a medical problem. Therefore, the consumer rationally chooses to let a physician have some control over the treatment decision.

In both of these examples, it is reasonably clear that consumers do not desire to delegate their authority completely. Rather the problem is better seen as finding the proper "mix" of consumer and expert responsibilities for decision making. The recent judicial embrace of the doctrine of "informed consent" to medical treatment can be interpreted as an adjustment of these responsibilities to strengthen the authority of the consumer relative to the physician-expert.

By this doctrine the courts firmly reject the model "doctor knows best" in favor of a mindset that insists that patients control their own bodies. As a result, it is now malpractice for doctors, say, to perform surgery before providing adequate information for the patient to decide whether he or she indeed does prefer to go ahead with the recommended procedure. While this does not deny the wisdom of requiring medical authorization for the procedure, it is a reminder that experts lack some of the information necessary to decide automatically what is in an individual's interest.

This completes our brief survey of the model of informed choice. Taking the maximization of consumer satisfaction as an objective, we focused on the important role of information and the costliness of providing it as factors affecting desirable government action. For some kinds of decisions, individuals are well-informed due to their own past experiences and through private sources of information, and no government action is necessary. For other decisions where the consumer lacks information due to market failures in its provision, the government may attempt to improve decision-making by providing information or requiring sellers to disclose information. Examples of these are government testing of auto fuel efficiency and truth-in-lending requirements. Finally, however, we explained that there are situations in which consumers will make poor decisions not because information is unavailable, but because of the complexity of using it. In these cases, at least some of the consumers' decision-making sovereignty may be wisely delegated through government action to experts who can act on behalf of the consumer, e.g., banning certain hazardous products or authorizing certain medical treatments.

2. The Citizen's Right to Know

Having considered the informational role of government in helping consumers participate in the marketplace, we turn now to the importance of information to the citizen's dealings with government itself. The discussion is divided into three sections, each analyzing one justification for mandating disclosure: A. Consent of the Governed; B. Take-up of Entitlements; and C. Control of Official Abuse.

A. Consent of the Governed

In a democracy, the legitimacy of the exercise of state power must rest on the consent of the governed. Democratic theory insists that public officials should be somehow accountable to the people for what they do. Since accountability presupposes awareness, if government acts in secret, accountability is easily frustrated. Thus, for reasons of both democratic ideal and political stability it is important to look for mechanisms to help assure that the citizenry is informed about state activities.

The election process itself, of course, furthers this goal. Not only are elections means by which voters register their opinions on the substantive platforms of the candidates, but also the election campaign can be an intensive competition of ideas. In short, the battle for office generates substantial information about how incumbents are performing in office and about how challengers might act, if elected. Thus, as an analog to the market, the self-interest of participants (candidates) serves the broader public interest. And, as we saw with the market, where there is concern that self interest and public interest may collide, informational requirements may be attached to the election process. Campaign finance disclosure laws are one important example; the "equal time" idea that gives opponents access to the media is another.

Combined with a reasonably educated citizenry (meaning, we suppose, one that is interested in and capable of evaluating political data and opinion) and a free press (which serves, on balance, as a reasonably neutral medium for mass transmission of political information), the regulated election process alone can go a long way towards satisfying our society's needs for political accountability.

For a variety of reasons, however, we have come to rely upon many more additional techniques in order to provide to the public information about acts of government and government officials. For one thing, it is thought important for there to be debates on government conduct more than at election time. For another, many who exercise state power are not elected officials -- or even political appointees. And, in any case, both citizen and media critics as well as out-of-office political adversaries, seem to need formal informational access levers in order to be able to report fully on those who are exercising power. That is, merely interviewing public officials and employees and relying on what individuals or bodies might choose, from time to time, to make public has been thought insufficient. Those in power at any one time have just too much incentive to promote their own short-run interests by not revealing what they know. This emphasizes the importance of establishing compulsory disclosure systems as part of the rules of the game. A number of "openness" strategies, both old and new, illustrate the point.

Patterned after the early practice of public legislative debates at both the state and Congressional levels, America has increasingly been turning to "open meeting" or "government in the sunshine" laws that are designed to assure that the formal processes of legislative/administrative/executive bodies and policy making committees at all levels are carried out subject to on-the-spot public scrutiny. In short, public disclosure of outcomes, even of who voted which way, had failed to assure sufficient public understanding of the nature of the decision-making. (Of course, not all public business, e.g., many personnel matters, need be done in public.)

The felt importance of public scrutiny of the state bureaucracy, which is not readily voted out of power, is reflected, in part, in various controls that have been imposed on administrative procedures. Especially important are requirements that agencies and departments that are engaged in rule-making issue proposed rules, invite public comments and them and then justify in writing their responses to the public input. Freedom of information acts are also in this vein. They grant members of the public access to a broad array of the written materials held in governmental files.

As yet a further example, our nation is continually experimenting with various forms of public participation in government other than as elected official or fulltime employed public (civil) servant. One approach is the use of appointed citizen boards and commissions to make policy decisions. Another is to have public advisory councils --

either of the ongoing sort, or in the form of commissions established on an ad hoc basis to study specially identified issues. In many communities, grand juries investigate and recommend on local policy issues. Yet another approach, widely tried out in Great Society programs, is the joining of representatives of program beneficiaries with professional bureaucrats in policy-making committees. Lay juries hearing public trials, of course, are a long standing form of public participation in the affairs of government. Our point is that in each of these settings the insertion into public processes of individuals who are neither elected to office nor fully employed by government provides one more line of communication to the public at large about the way government is being conducted.

How effective this whole range of mechanisms have been in informing the public, and at what cost, is another matter. It suffices for now to appreciate the wide range of routinized information systems, each of which pushes toward open government.

B. Take-Up of Entitlements

The welfare state has created "new property" rights. So conceived, property is not only private land and personalty, the ownership of which government protects through law. Property is also created by government through modern social legislation. Some would include in this category things such as TV broadcasting licenses, taxicab medallions, milk price supports, garbage collection contracts, tobacco subsidies, car import controls, tax expenditures (such as investment credits or mortgage interest deductions) and the like -- each of which is seen to create an important economic benefit on which beneficiaries come to rely and depend, just as is the case with traditional property. Others think of the "new property" more narrowly -- comprising the cash (and in-kind) transfer system that provide the basics of life to eligible individuals; social security, unemployment compensation, welfare, food stamps, public housing (and related programs), public education and Medicare/Medicaid are the key items here. Most, or all, of these latter schemes are typically included when analysts speak of entitlement programs; and this expression "entitlement" well captures the "new property" idea.

Professor Charles Reich who first popularized the new property phrase was especially concerned about (a) the conditioning of entitlements on what seemed to be the waiver of substantive constitutional rights and (b) the arbitrary exclusion from or termination of benefits (i.e., the absence of procedural protections). The former threatens a serious erosion of personal liberties -- if the government, as the increasing source of economic well being, is able, in effect, to "buy up" the freedom of those members of society who depend on the state. The latter risks individual unfairness, the creation of a sense of personal powerlessness, and the possibility of covert, categorical discrimination. We will return to these themes in section C; here we want to emphasize a quite different feature of the new property -- awareness and take-up. Our argument is that not only does government promote the take-up of new property rights, but also that government is seen in some cases to have a duty to do so.

Let us first consider the awareness and take-up problem by looking at private gifts. In our society, donors are thought to have great discretion over who may be the objects of their gifts. Viewed broadly, there is little reason to think donors make significant mistakes in their giving because they have inadequate information about the range of potential donees, especially since most donors surely both want to and do give primarily to family members. Moreover, in general, what knowledge potential donees might have is not so important since a gift is not something one usually applies for.

Sometimes, however, the knowledge that potential donees has is important. Yet, in at least one important example of this -- the case of foundation grants -- although such information is important, the information problem seems not very serious since a fairly well developed network of communication has naturally grown up between grantors and grant seekers. Would be recipients of foundation grants tend to be reasonably intelligent and inventive; they not only typically realize that they might be eligible for such grants, but also they are likely to be reasonably good at finding out about the actual availability of such moneys. Besides, where they are not, there has developed the professional intermediary who seeks out clients on whose behalf he or she can serve as a go-between with donors. Moreover, among many non-profit grantors there is, in the end, real competition to do the most "good" with the grants; and this competitive pressure stimulates some search and outreach efforts to identify "worthy" donees.

Of course, there is great variation here, and private donors can have quite peculiar and idiosyncratic notions of worth (including what will get the donor the best publicity). But, plainly, America's embrace of non-profit tax-exempt status for private foundations reflects the social judgment that this sort of decentralized and private worth-determining (within wide boundaries) is desirable. As a result, even though it might be thought quite proper to require foundations to disclose who are the objects of their charity so that public officials can determine that their activities satisfy tax exempt purposes, it would seem inappropriate to most for government to regulate donor outreach efforts. Whether enough outreach has been engaged in, in short, is a matter for grantors to decide.

Now let us consider another important class of private giving -- the private provision of free (or subsidized) "social assistance." Direct charity and social work efforts are the mission of many American institutions. Now if one were simply to set out to feed the hungriest or to cure the most addicted, there might indeed be a problem in identifying the right objects of one's charity; and, unlike the foundation world, one could not count on their finding you. In practice, however, for at least two reasons, this sort of frustration of objective is limited. First, much of this giving is organized in ways that tie into existing mediating institutions (the church is probably the most important example); thus, either donors already pretty much know who the "right" recipients are, or else, through the structure of the institution, they rather easily find out. This successful match is made possible because of the vital addition of this feature: the donors define the "right" recipients as the appropriately needy members of that organization or institution.

Second, even where there is no symbiotic institution, the giving organizations and their sponsors seem typically happy to define their objectives like this: so long as we are helping about as many people as we can handle, and so long as those we are helping are reasonably needy, then our private motives in providing social assistance are pretty well met -- even if we have not picked up the absolutely neediest cases.

There are shortfalls, of course. Surely Alcoholics Anonymous (or else some similar group) disappointedly realizes that it devotes itself to too many "easy" cases (where the person would be cured anyway) and fails to draw in enormous numbers who could be saved. And surely some local priests, especially as church attendance and church-based social life declines, disappointedly concede that they no longer know about the clothing, marriage counselling and job finding needs of large numbers of the parishioners -- needs that in earlier times would have more readily been met through both the parish infrastructure and local Catholic Charities offices.

In short, in some respects there is an information problem: incomplete take-up of private social assistance is partly traceable to the unawareness of those in need combined with the parallel unawareness among providers. Moreover, even when do-good organizations advertise for clients, information failure causes some not to receive help they would otherwise get, and this failure in turn frustrates some donors and some of those who run charitable organizations.

Nonetheless, these disappointments and inefficiencies do no grave harm to the moral integrity of the private gift relationship; indeed, private charity not be thought unfair even if donors made no efforts to ferret out unidentified donees. The reason is as before: since would be recipients are seen to have no right to the charity, society feels it generally improper to intrude itself into or to make collective judgments about the propriety of donee-finding efforts.

The same conclusion applies generally to those two other main private sources of property -- income from employment and income from the sale of property. To be sure, as explained in our earlier discussion of "informed choice," there is a potential role for government in improving the market in goods and jobs by improving the information flow among parties to potential transactions. But when, in the end, someone fails to get a job or fails to get the best price for something because of a lack of awareness of an opportunity, Americans are not inclined to see the "inefficient" result as *centrally threatening* the defensibility of the institutions of private exchange or private employment. Again, the reason for this, we think, is that Americans don't view access to particular jobs or to the best price as a "right."

Put differently, in general, as with the case of private charity, it is ultimately thought to be up to the applicant (or to the seller or buyer) to learn of the opportunity; and although those on the other side of the transaction often find it in their self interest to search, society imposes on them no *moral* duty to find the best partner. In short, one who is not found will not usually be heard to complain that no search was carried out.

We think that this traditional view is highlighted by a contrasting perspective reflected in recently adopted non-discrimination laws; these laws have moved us toward the idea that people have certain "rights" both to private jobs and to the benefits of private non-profit organizations (e.g. schools and hospitals). And along with these laws, have come new disclosure-outreach requirements. For example, tax exempt schools find they must advertise that they don't discriminate in admissions; and many employers find they must advertize job openings.

As for the "new property" we think that Americans reject the traditional mindset. Suppose, for example, that 20% of those elderly Americans who are eligible for Medicare did not realize that, and because of this lack of information paid their health care bills themselves instead of having Medicare pay for them. We think that most people would find such a state of affairs fundamentally wrong and would be especially displeased if the primary explanation lay in the fact that the government had made no effort to inform the 20% of their eligibility. In short, people think that those who have a legal claim to this benefit should get it (or if they don't want it, should make that choice for themselves). Put differently, we think most would agree that by enacting the program Congress created a right, and that it is now the duty of the administering agency to see to it that it is claimed. Hence people would say that even though it will save us taxpayers money if the entitlement goes unclaimed, we don't think we deserve this "windfall" inasmuch as it is simply unfair for others not to get what is rightfully theirs.

To be sure, this perspective does not imply that the whole of the Medicare budget is to be spent rounding up claimants. Indeed, it is quite unclear how to decide just how much should be spent on outreach. But, to repeat, what is clear to us is that many would be indignant if it turned out that large numbers did not know of their eligibility and that the agency in charge had made no effort to inform them. For the moment, therefore, we will be content with the formulation that, for entitlements like Medicare, we sense a widespread consensus that "reasonable" outreach efforts aimed at benefit take up are vital to the moral integrity of the program. In sum, unlike our feelings in the private setting, substantial non take-up of Medicare would be thought an example of gross horizontal inequity. And this difference, we think, is what creates the outreach duty.

Notice that we did not seek to defend our position on the ground that those who do claim Medicare are getting something they are not entitled to, or that the claimants and non-claimants are divided between, say, those who are friends or allies of the bureaucrats and those who are not. Of course, in some instances these more insidious inequities might occur. Suppose a TV broadcasting license is given to its only applicant because the only one who knew to apply was a "colleague" of the licensor and would not have received the grant in open competition. In this case the public misbehavior is compounded -- and in a later section we will address disclosure as a technique for controlling this abuse. But as we have tried to show, outrage in the Medicare example does not depend on such improprieties; the 80% who do claim are getting nothing more than they are entitled to (this does assume, we suppose, that Congress stands ready to fund the program fully if all eligibles apply) and have no special, favored links with the bureaucracy. Still, it is highly offensive, we sense, for the other 20% to lose out on account of easily avoidable ignorance. Thus, in the same vein, even if all the TV broadcasting license applicants are highly competent and are fairly selected among, we think the public would still be offended if the applicants only included the old timers in the business because only they "naturally" learned of the license competition and no public notice of it had been issued. And, as another example, it is important for there to be public notice of a post office auction not only because this will help the post office realize the highest bid and not only so as to avoid connivance between post office workers and bidder friends, but also simply because John Q. Public has a right to join in the auction.

In sum, a difference between public entitlements and private transfers is that the responsibilities of grantor to grantee are not generally seen as the same: Private parties may limit their purposes and means for achieving them in ways that would usually be inconsistent with the implicit duty of the public administering agency. Another difference that makes outreach practically more important is that government and its agents are less likely to know the eligible population as well as do those running mediating institutions that perform charitable work.

Although we personally think the obligation to promote take-up should pervade the entitlement programs, we must concede that we are less confident that there is a social consensus with respect to all the programs. Social security retirement benefits, to be sure, fall into the same category as Medicare -- and then some. Of course, we doubt that too many 65-year-old eligibles today would be unaware of their entitlement even with no government outreach efforts (although we are much less confident that, without publicity, workers would realize that they are eligible for reduced aid if they take early retirement starting at 62).

But when it comes to the need-based programs, things may be somewhat different. Part of the difference, of course, stems from wider opposition to the programs themselves. Still, even some program supporters may have objections to welfare outreach because of what they conceive as the function of the scheme. One argument is that although the purpose of welfare is to meet need, the program's formal terms -- income and assets limits, etc. -- do not and can not accurately reflect true need. But, it would be argued, by relying on a system that requires those who are hurting enough to come forward and ask for help without coaxing, the program will better satisfy real need; indeed, it is feared that outreach, by contrast, would bring in both formally eligible but actually undeserving claimants as well as ineligible claimants who would be hard to identify. Of course, whether self-initiation, as an empirical matter, is a good proxy for real need, is something that we would expect advocates for the poor to vigorously contest -- along with contesting that the "true" purpose of welfare is only to aid some of those who are statutorily eligible.

An even more extreme argument against outreach is the simpler formulation that welfare is only meant to aid those formally eligible persons who learn about it. Behind this, we think, lies the view that welfare really is charity, that there is no entitlement to it, and that government has no more duty to find all the needy then does any individual who routinely provides handouts to some beggars.

This dispute about welfare outreach need not be resolved here. It seems enough for now to have before us the general justification for demands that government encourage the take-up of entitlements through outreach programs designed to inform people of their rights.

And, clearly, in a variety of areas (whether or not in response to a campaign for outreach) government continues to engage in information efforts targeted at potential beneficiaries of government programs.

In the food stamps program, for example, there is a substantial outreach effort (brought about in part, it seems, as the result of prodding litigation). This has been seen as especially important since among households not already on cash assistance the proportion of claiming food stamps is quite low. As another example, the IRS prominently advertises the earned income tax credit on the 1040 tax return booklet. So too, the Social Security Administration promotes the needs based Supplemental Security Income program (SSI) to social security beneficiaries, many of whom are entitled to have their pension supplemented by SSI. And, of course, bids for government contracts and grants are also widely advertised in places potential applicants are likely to look.

In conclusion, here is another informational role for government -- promoting the take-up of the new property rights that government itself has created.

C. Control of Official Abuse

In the face of police questioning, suspected criminals have the right to remain silent, to contact and confer with a lawyer and so on. These rights stem from our nation's committment to the principle that one is innocent until proved guilty, combined with the fear that over-eager police may abuse their positions of authority by unfairly extracting from a suspect information that is later used to convict him. But suspects in policy custody may well feel highly vulnerable and may be quite unaware of just what their rights are. Miranda warnings, imposed on police by the Supreme Court, are intended to curb official abuse by insisting that the police themselves inform suspects of their rights (and, as a sanction, to exclude from evidence that which was obtaned in the absence of such warnings). Here, then, we have an example of using disclosure to empower individuals so that they in turn may hold public officials in check.

A similar example can be drawn from the welfare law field. Once the Supreme Court held that individuals had the right to a hearing before their welfare benefits were terminated, it became essential for individual claimants to know of this right. So now aid cutoff notices disclose that the right to a hearing exists. As with Miranda warnings, these notices put information in private hands that can be employed to help check public errors and abuse. As with all the examples to be discussed in this section, it is understandable why, without outside prodding, individual officials dealing with individual citizens might well be unwilling to provide information that can be used to criticize their own behavior.

Welfare hearings, of course, carry the idea of using information to control officials a step further. Not only is the notice a disclosure strategy, but also the right itself (the hearing) is about information. The function of welfare hearings, after all, is to let you tell your side, to allow you to cross examine adverse witnesses, and to force the hearing officer to provide you with a written justification of the decision reached based only upon evidence obtained in the hearing. Thus, hearings are meant to promote fairer and more accurate results. They also serve to respect the dignity of the claimant, by personally dealing with him as an individual. Moreover, when we combine the right to a hearing with the affirmative duty to disclose this right to claimants we have created a deterrence system; put simply, knowing that someone might well later force you formally to account to them, may prompt you to treat that person properly at the outset.

It is, of course, difficult to make effective use of the hearing right unless you know what are the substantive rules governing welfare eligibility. Moreover, from the welfare claimant viewpoint, it is probably even more important to know what sort of case must be made in the first place -- that is, before you are turned down or cut off. This perspective has lead to yet a different kind of informational demand: "Open up to us and publicize the welfare worker's rule book or manual." One objective, of course, is to put applicants and their representatives in a position to check up on whether, say, the intake technician has simply made an error.

But in addition, this information is often sought as a means of controlling potential (or feared, or actual) abuse of discretion. For example, suppose that welfare workers can, according to the statute, provide extra money for winter coats on a showing of "special need." Standing alone, this gives a public official a great deal of discretion in determining who needs the money for warm coats. And it is possible that those who get the coat money are those who a) the worker likes best, b) are most pliant in dealing with the worker, c) kickback funds to the worker, d) are white or Protestant or vote Democratic and so on. In short, the official might be invidiously using criteria other than special need. To be sure, identifying a pattern from the decision themselves (another use of information) may expose such behavior, as might hearings following denials; but we have another point in mind here. The concern about abuse of discretion, along with the simpler concern about irrational and inconsistent decision making, is often shared by higher-ups in the agency who, in turn, send internal guidelines to the on-the-line deciders. These guidelines are intended to shape day-to-day behavior. By gaining access to these guidelines (the welfare manual), then, claimant groups hope to play a private policing role themselves. And, as before, it is hoped that wider knowledge better serves deterrence.

Having reasonably clear and public rules about who gets which government jobs and promotions (the civil service system), who gets which government contracts, who gets which public franchises (e.g. radio broadcasting licenses) and so on are all aimed, at least in part, at the same concern -- controlling abuses in individual cases. To return to the post office auction example earlier described, we are here concerned not with the right of John Q. Public to bid, but rather with the problem of possible connivance between postal workers and "friendly" bidders.

Disclosure of the decisional criteria of bureaucrats can serve as a first step to something beyond fair treatment of individuals: putting these criteria in the limelight subjects their substance to criticism, thus facilitating changes in the rules themselves. Thus, when unreviewed discretion is exercised one can broadly attack this form of decision-making; once decision practices are public, the critic's focus turns to both the application of discretion and the rightness of the substantive criteria themselves. The latter may mean challenges of two sorts. Return to our "winter coat for the specially needy" example. Suppose it turns out that the decisional rule in practice (say, as revealed by the manual) is one new coat every two years the claimant goes through a cold winter. On the one hand, the critics are now in a better position to urge the adoption of a one year rule and to argue that it should also count whether the old coat is too small, worn out or stolen; knowledge of the correct rule also facilitates broader claims, such as that extra money in cold winters for both boots and heating costs are equally appropriate. On the other hand, public exposure of the criteria being used may lead critics to urge the abandonment of discretion (that is, of individualized attention) altogether; for example, it might be argued that the money used for special needs grants should be folded into the basic monthy allotment or perhaps divided quarterly over all claimants. In short, once it is better understood how discretion is exercised, one is in a stronger position to evaluate whether this is desirable in the first place.

In some cases where the legislative guideline is vague, there is no manual. Nonetheless, decisions in fact may well be made in accordance with rules of thumb well understood by the decider(s). It is as though there were an effective manual; and in such circumstances the purposes of public disclosure (in effect, getting deciders to commit their practices to writing and then publish them) are much the same as when disclosure of the manual is sought.

At other times, however, there are no rules of thumb, at least deciders have not viewed their actions that way. In these situations, disclosure, if it is to mean anything, is probably going to require a change from ad hoc, clean slate, isolated decision making to the adoption of rules of thumb or at least presumptions. And that, presumably, is the goal of those who seek disclosure, relfecting the belief that benefits of highly personalized (perhaps professional) judgment are outweighted by the risks of uneven and sometimes invidious treatment.

Although we will have more to say about it later, it is worth a few words now to consider how deciders may react to pressures to make public their discretionary practices. In some cases it may be very difficult satisfactorily to articulate a systemmatic set of criteria being employed. This may be especially true when the mental processes used do not involve the careful toting up of factors. If pressed, therefore, the demands of rationality may force the deciders to retreat to simple and identifiable rules of thumb, and, to repeat, this can have good and bad consequences. On the good side, ad hoc and inconsistent decision-making may be regularized; however, the intangible "good judgment" factor may be squeezed out. We will look more closely at this trade-off in a Chapter 6.

In the end, providing information to the public is plainly not the only strategy for controlling official deciders. Nor is it necessarily the most effective.

Various internal management controls (for example, audits) can be employed. But the main point we have seen is that disclosure is used in a number of contexts to regulate administrative decision-making. It has become a popular tool of both policy planners at the outset of program design and of critics in response to perceived abuses in more closed systems that are already in operation. In sum, here is yet one more role for government to play in providing information in order to improve the relations between citizen and government.

Conclusion: Information is Power

In 1982 the old adage "what you don't know can't hurt you" seems quite inapt. To the contrary, information can help people to improve their personal welfare both in their private market dealings and vis a vis government. Moreover, the four models we have examined reveal not only benefits of information to the public, but also affirmative roles of government in providing that information. Hence, if "a little knowledge is a dangerous thing," we have seen a variety of settings in which private parties need to rely on government to help them out of the darkness and into the light.

Drawing from all of the models, then, we see that governmental assistance in providing information can be designed with this range of impacts in mind: It can help people better understand what they want. It can help people get things they are entitled to. It can lead to the fair application of existing rules and to the adoption of better rules. It can give people more confidence in their government.

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CHAPTER 5

CONNECTING INFORMATION THEORY TO SCHOOL SORTING

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Chapter 5

CONNECTING INFORMATION THEORY TO SCHOOL SORTING

What general virtues *might* be claimed on behalf of increased disclosure about school sorting? Our purpose in this Chapter is to bring to bear on school sorting the models of Chapter 4 in order to gain a more precise appreciation of what good could plausibly stem from such a reform. In short, in this Chapter we look on the bright side.

I. Take-up and Informed Choice

A. Introduction

Increased disclosure about school sorting might lead to an increased take-up of schooling entitlements that are now available to students and their families. Whether this would be a good impact, however, is not clear, as we will shortly explain. Increased disclosure about sorting might also improve the quality of the schooling choices that are made. But before we explore the potentialities in public education for these two roles of information (take-up and informed choice) identified in Chapter 4, it is first necessary to recognize that the ideas of benefit take-up and informed choice take on somewhat special meanings in the public school sorting context.

At the simplest level take-up, of course, refers to whether the child is attending school at all. That is, like food stamps, public schooling is an entitlement of a certain group in society (here defined generally by age rather than need), and, paralleling food stamps, one function of disclosure would be to make people aware of the child's right to this benefit. So put, however, this is not a very interesting policy issue, at least at the elementary and secondary level. In the first place, the entitlement is virtually compulsory -- the child must take-up the entitlement or else show that he or she is receiving an acceptable private substitute. And in any event, whether or not because of the compulsory feature, in the 1980s one would be hard pressed to find large numbers of American families that are unaware of their right to send their children to a free public school (but c.f. illegal aliens?). Thus, whether or not this is a triumph for information, at this point it is hard to imagine how a self conscious disclosure strategy aimed at the broad point that some schooling is available could have much behavioral impact.

To be sure, the fact of virtual universal awareness has not assured 100% take-up, especially at the high school level. There, the formal and de facto (through truancy) drop out rate is by no means trivial, particularly in central cities. This demonstrates an important point always to be kept in mind: awareness of entitlements alone does not assure their take-up. The goal of information, thus, can only be take-up to the extent that people want to claim their entitlement, a notion we suggested earlier in our discussion of Medicare.

Why is the take-up of entitlements incomplete despite information? The reasons vary, we think. Consider food stamps: even with knowledge of their rights, some people will not claim the stamps because of feelings about stigma, some because the hassles and other costs of applying outweigh the low level of benefits that will be received, and so on. At the broadest level, the explanations for deliberate non-take-up of schooling are analogous. That is, in both cases the "free" benefit is rejected because of its "costs." Yet, we believe the nature of the benefit/cost relationship differs substantially. First, in choosing schooling you give up the chance to do something else with a substantial portion of your time. This is not true in the case of food stamps. Hence the cost side of the equations differ markedly. Even more important for our purposes, there are differences on the benefits side. In the case of food stamps, so far as the government is concerned, the thing it is providing is always the same -- coupons that pay for food. Of course, it is true that individuals value food differently and that the amount of the entitlement varies with need. In the case of public education, however, the entitlement is much more highly variable -- by school, program, teacher, and so on. In short, the actual benefit made available to a particular individual may be worth very little to him despite the general value of an average educational opportunity to an average person.

And this bring us back to our main theme. Appreciating the varied nature of the school offering reopens the possibility that non-take up of schooling has to do with information after all. That is, take-up in the public school setting concerns not merely knowledge of the availability of free schooling abstractly, but also awareness of a specific option or options. Put this way, it is not enough to say that of course all 16 year olds and their families know that free public schooling is available; rather, what is important is how widespread is awareness of the right of high-school age students to attend, say, the county-run regional occupational centers which concentrate on teaching specific vocational skills.

Recognizing this relevance of disclosure to the drop out and habitual truant population, one can imagine that informational outreach to these non-attending young people is plausibly very promising.* We did not, however, focus our field work on non-attenders. Hence we can offer little more here on the existing practices and real promise of disclosure with respect to high school drop outs and habitual truants.

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*In the same vein, outreach may be important to people beyond high school age with respect to free or virtually free adult night school or community college offerings. Again, mere awareness of such institutions may not suffice; awareness of the nature of the programs, or at least enough information to motivate personal inquiry, may often be needed before people can sensibly decide whether this is an entitlement they wish to take-up.

But, once take-up is viewed in terms of specific options rather than of schooling generally, then it is readily appreciated from our descriptions in Chapter 2 that take-up is an important issue for those children in school. The regional occupational center example, after all, is as applicable to those in school as it is to those who have dropped out.

Now here comes a puzzle. If awareness of options within public education -- whether as to schools, programs, or teachers -- is to be thought of as falling under the take-up heading, is there any room left for the idea of informed choice in public education? Although our discussion of informed choice in Chapter 4 was set in the private sector, the basic ideas we raised are readily carried over when the state owns and runs what in effect is an enterprise and sells a product or a service. The question now becomes: when the state gives something away, do informed choice and our refined notion of take-up become the same thing? We suppose that one could think of it in that way. Yet at the same time it is important, we think, to keep in front of us the different sorts of arguments presented in Chapter 4 as to why government might have disclosure roles to play in promoting both informed choice and the take-up of entitlements. And the most felicitious way to preserve those different perspectives, we have concluded, is to make this arbitrary distinction: awareness of the existence of public school options we will treat under take-up; having adequate details about those options in order to select between and among them we will consider as an issue of informed choice.

One more general problem must be addressed before we try to tie disclosure theory to the details of the sorting process. Our discussion of informed choice in Chapter 4 assumed adult choice among adult options; the take-up talk too was ultimately bottomed on personal adult decision-making. Once children are introduced the problem becomes more complicated. Is it informed choice and deliberate take-up by children that should be our concern? Sometimes, perhaps; but surely not for children of all ages. If not, then we must be interested in someone's paternalistic decision for the child. As we have cast the policy option to be explored in this study in terms of providing information to parents, this suggests a commitment to the idea that informed parent, or family, decision-making is to be the goal. But that is not necessarily, or automatically, best for children, and it should not be simply accepted without analysis. Thus, in our discussion that follows, one important focus must be: why disclosure to parents?

B. Take-up and Disclosure

Our discussion in Chapter 2 identifies a number of points where the school sorting process is self-consciously receptive to requests by students and their parents. That is, family preference is variously required, solicited, accepted, or at least tolerated with respect to a great many of the decisions that determine a pupil's precise educational experience. In many cases, the student or family hardly have entitlements in the sense that persons can be entitled to Social Security after the rather mechanical application of reasonably clear criteria. This is because school officials have, by and large, retained discretionary authority to grant or deny requests on an individualized basis in ways that the Social Security Administration has not. This distinction, however, should not blur the fact that students and their families do have recognized roles in the sorting process; they have the right to ask if not to demand. Indeed, it can perhaps be said that they have a right to have their requests reasonably considered. In this respect, many school options resemble, say, special needs extras awarded to claimants by the welfare system.

Points where student and family preferences are currently taken into account can be illustrated by drawing on our descriptions in Chapter 2. With respect to school selection, we have seen that intra- and inter-district transfer options everywhere exist for students meeting certain criteria, and that in some places fairly unrestricted intra-district open enrollment plans are in place. So far as grade level placement is concerned, we have seen not only that retentions are concentrated in the early elementary grades, but, more important for these purposes, that they virtually always occur only if there is parental approval.

While a child's formal curriculum is essentially compulsory in the early grades, as he progresses course options are increasingly introduced. Subject to resource constraints (and allowing in some cases for prerequisites), these "electives" are allocated primarily on the basis of choice. As we have seen, it is conventional to ask for individual parental approval of junior and senior high programs, although in practice schools vary in their insistence on compliance with this requirement.

There are as well substantial opportunities for making teacher choices in many public schools today. At the high school level, as we've seen, many schools give students (acting on whatever directions parents may attempt to give them) broad choice among teachers -- subject, of course, to school staff deployment decisions which determine who is teaching which section of which course. While teacher selection opportunities seem fairly limited in junior high schools, in elementary schools it is plainly the norm at least to receive and listen to, if not to solicit, parental preferences.

Finally, as we've seen, public schools seem receptive in special cases to changes in initial assignments to teachers, courses or even schools after the school year or term has begun.

Given the reality of these sorts of opportunities to pursue options, it is necesssary to say something of their purpose before commenting on the possible positive role for disclosure. We will assume that the broad goal in sorting children is to serve the individual child's best interest, subject to the realities of limited resources, and taking into account the benefits and detriments that certain children create for others when put in the same classroom. In this context we see three divergent perspectives on the function of selection by parents and students. We will briefly sketch them.

One perspective begins with the judgment that when professionals make sorting decisions at a school they will maximize the educational opportunities of the children as a group so that as an initial matter it would be preferable for students and parents to have no voice in the matter. This view recognizes the human reality that dissatisfied parents and students can make things difficult for staff, other children and themselves, thereby impairing the effectiveness of the presumptively optimal sorting scheme. As a result, in order to make the best of an undesirable thing, the system will reluctantly bow to strongly held parent and student views -- at least where other values aren't too seriously sacrificed. From this perspective, while it is important for school officials to have good information about student needs, disclosure to parents is something to be avoided to the extent that this is feasible without thereby creating hostile and demanding families.

A second view affirmatively seeks strategic involvement of parents and students in the sorting process, not particularly in order to achieve better decisions for children, but rather to achieve a more general feeling of satisfaction, thought to be brought about by participation in the process. This consumer satisfaction, in turn, is seen to improve the effectiveness of the schooling enterprise. From this viewpoint some disclosure may have an important function to play; it is especially advantageous, however, for pupil and parent choices to be about things that can be readily accommodated and without too much jeopardizing the sorting pattern that school officials in fact think is best.

Yet a third perspective is that, in general, parents ought to decide among the choices available what is best for their own children. This view usually rests on both skepticism about the motivations, competencies and effectiveness of school officials as well as confidence in the ordinary family's concern about its child, its knowledge of the child's needs and its willingness to listen to the child's own opinions. Thus, it is argued that, on balance, it is better for families to decide which opportunities to take advantage of for their children. With this view, of course, it becomes terribly important for parents to know about options they have, and extensive disclosure efforts may be crucial.

We have purposely drawn these three viewpoints in bold relief in the attempt to emphasize differences. In practice, of course, individuals may well hold much more complicated views, perhaps drawing on some of each of the three for different aspects of the sorting process. Or for different families -- since some may think (and for different reasons) it far more important to put information in the hands of some families than others.

Moreover, since there is plainly some sentiment for each of these three general viewpoints it is difficult to "explain" today's information practices in terms of any one of them. Indeed, even individual policies may be justified on the basis of more than one world view. Take, for example, the choice of courses given at the high school level. Does this rest on the belief that families really do know what is best? Or is it an attempt to create a sense of participation and satisfaction with respect to something that actually matters rather little in view of the persuasive role of counsellors, past student performance and prerequisites in determing the actual placements of students? Or is it a reluctant extension of options to students who will otherwise be destructively non-cooperative in class and to parents who thereby are less able to blame schools for how the child's curriculum has slotted him into a certain career path? Plainly, some things can be said for each of these "explanations" of the course option practice. Similar multiple analyses could be offered for many other aspects of the sorting process.

Only the third view -- that family choice is best -- is, in our opinion, fully consistent with the notion that take-up is good. And, thus, when considering the take-up question it is primarily in terms of this view that one should look for a positive function for disclosure to play. Put differently, if you hold one of the other views, then promoting take-up is not your objective. Indeed, to the contrary, those disfavoring family choice must recognize that the take-up-promoting disclosure sought by others may yield what they see as negative impacts. Let us emphasize this with three concrete examples.

Take the elementary school promotion-retention decision. If one believes that parents ultimately better determine whether, despite, say, immaturity and low achievement, the child ought to take-up the opportunity to go on to the next grade, then it is important to get school officials to make clear to parents that they can veto a teacher's proposed retention. By contrast, if the reality of the parental veto is seen as a way to head off either the sabotage of what the professionals think could be best for the child or the harassment of school officials by disgruntled parents, then there is perhaps little to be gained by stirring up in the minds of quiescent parents the idea that if they disagree they can win. Because of the highly individualized way that retentions are now carried out, it is by no means clear that all families to whom a retention is proposed appreciate that they really have a choice, even when the district insists that they actually sign a form acknowledging their acceptance of the retention of their child. For advocates of family choice in this matter, then, affirmative disclosure requirements here (perhaps as little as a more candid form could matter) are a potential area for reform.*

If all families realized just how powerful they are on this issue, the consequence of fuller disclosure about the rules governing retentions could well be fewer retentions. That is, there might be a higher take-up of the parental veto. The point is that one's judgment about the desirability of such a consequence turns, we think, on one's underlying opinion about who ought to decide the retention question.

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*Note that school officials could claim that they do actively engage parents in the retention decision whenever the parents have something to say. This, however, means that the school officials simply reserve judgment as to how much to let on to parents until they have had a chance either generally to size up the parents or to evaluate their specific views. While perhaps professionally defensible, this notion of selective disclosure would hardly satisfy those who believe in a strong presumption in favor of family choice.

The same idea may be illustrated by considering the matter of elementary school teacher requests. If the purpose of respecting or even listening to parental requests for teachers is that parents may have good judgment about which teachers are best for their children, then the lack of publicity given to this opportunity in many districts represents another possible area for disclosure reform. Yet if districts only reluctantly give in to these demands in order to keep upper middle class families in public school, to reward those who participate in school affairs and are thus in a good position to know of and exploit this option, to diffuse complainers, etc., then any increase in requests that might flow from wider disclosure of this opportunity would likely be unwelcomed.

Typical intra- and inter-district transfer options represent a final example of the point. As we have seen, districts commonly restrict them to those families demonstrating what can be described as family convenience reasons. We think it undeniable, for example, that a child could benefit both directly and indirectly (by helping the family) from a change of schools that permitted the family conveniently to secure a desired child care arrangement. If a family's judgment about this is to be respected, then again we have a promising area for disclosure reform inasmuch as many districts, as we have seen, make no real attempt to tell parents that these are possibilities they should consider. Here the district's justification for waiting for parents to come forward and ask does not seem to rest on a judgment about the child's best interest, since district officials probably don't know about the alternate day care arrangements that are available. Rather a district's low profile seems to rest on a concern about the genuineness of the reasons that would be proffered were this option publicized, the number of new transfer claims that might be made, and general financial and administrative costs that might attach to a system that ran on other than a "squeaky wheel" basis. Thus, the point once again is that more take-up, a potential consequence of wider disclosure of transfer options, could well receive a mixed reception.

In sum, having appreciated some of the subtleties of the take-up idea as applied to school sorting, one must acknowledge that not all would view it as a social gain if increased disclosure indeed did cause children to be placed in different programs, classrooms, or schools from those they now attend. We will have more to say about this in another chapter.

Before moving on from the take-up issue we want to emphasize again the limited potential of the idea. Since some families now pursue the existing options (in varying degrees), they are plainly finding out about them. Doubtless many others know of opportunities they do not wish to pursue. Thus, the connection between new disclosure and additional take-up must lie in newly reaching with information those who, if aware, would pursue these options. Nothing in our field research would allow us to estimate just how large a population there is whose behavior would change with more information. That would take either a careful experiment or sophisticated research that was not possible given the limited size of our project. In such a further study, one would probably seek to measure such behavioral changes both in terms of the general increase, if any, in take-up rates and terms of possible in selective increases in groups one intuitively judges are under informed.

C. Informed Choice and Disclosure

In Chapter 4 we gave reasons why "market failures" might lead to the provision of an inefficient amount of information. There we focused on privately provided goods and services. When, as with public education, government is providing the thing that is to be the subject of the information, the problem can be especially acute. This is so if for no other reason than that government often has a monopoly or near monopoly over what it is providing. Moreover, one special pressure that government, as provider, faces stems from the bureaucratic perception of a limited budget. When, as with education, there is little private competition, it is readily understood why money might be channelled into program rather than into information about program. After all, so long as students are enrolled in something, we are talking about a choice to have less money for all classrooms in order to try to improve the fit of individuals into those classrooms. But, unless the gains from the latter are vivid, why shouldn't an administrator save the money for the former? And in the case of schools it is by no means clear that the potential gains from more informed student/family choice are things for which public school leaders are or easily can be rewarded. Hence, this makes for even less personal incentive to pursue the goal of informed choice.

Identifying this risk does not carry us very far, however. As with any market failure situation, if the solution lies in a non-market (i.e., political) determination of how much information is appropriate, how do you tell when the solution reached is the "right" one? Put differently, since the amount of information actually provided by government is politically determined now, why is not that, by definition, the amount that "ought" to be?

In response to this puzzle, prospects for reform seem to lie in one of two directions. The first suggests that the present solution may be challenged by showing that political deciders themselves are currently unaware of just how much good would come from further information. The assumption is that if they could only be made aware of this potential social gain, they would naturally promote additional disclosure. The second argues that the political process is not now pursuing the "right" objective; if, however, deciders could be convinced, enticed, or coerced to alter the goal, then more information would be provided.* Yet, what is the right objective may itself be a matter of controversy.

In Chapter 4 we talked of informed choice in terms of efficiency. But as suggested there, efficiency is a difficult goal when those who benefit are not directly charged for the costs of disclosure. Thus, even if, say, $X of further investment in disclosure by government would be worth more than $X to recipients of the information, it is still controversial whether or not government should spend the sum if non-beneficiaries must wind up paying for most of it. The answer depends on one's appraisal of the distributional consequences. This redistributional tangle is, of course, part of all public goods problems. In fact, concerns about "who pays" can often block all sorts of collective efforts despite the net increase in social welfare that would come from them. In any event, there seems no getting away from this problem when government is already right in the thick of things by providing, as with public education, the good or service itself -- after all, the "who pays" issue first must be addressed as to the good or service.

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* Note for both arguments we have talked of increased disclosure; yet increased awareness or changed objectives can also lead to the conclusion that past practices provided excessive information. Witness the Reagan Administration's decision to recall the Car Book.

Moreover, even apart from the "who pays" problem, the identity of the beneficiaries may make an important difference in the political decision whether or not to engage in the collective enhancement of some people's welfare. Are they the poor? the rich? or those clustered around the "median voter?"

Having noted all of this, we should also say that it is not our purpose here to explain how the necessary political coalition might (or probably could never) be put together to change any current government action. Our point rather is to make clear a general framework in which it could be argued that government ought to provide additional information in order better to promote the informed choice of a service or product itself provided by government.

Before moving on, one more avenue must be canvassed. Why doesn't the solution lie in the private disclosure of information about public school sorting?

One reason for an inadequate private market in information about public school sorting, as explained in Chapter 4, is the difficulty of providing legal protection for information so generated. For example, in California Lillian Svec Clancy has actually tried going into the business of selling books that provide detailed school-by-school data for all public schools in particular California counties. For business seeking to locate homes for new employees in "good school" neighborhoods, for people thinking of moving and for those families contemplating asking for an intra- or inter-district transfer, such books can provide useful data. They are also instructive for those who want to see how their local public school rates. But because of the ease with which information can be transmitted without paying royalties (by word of mouth, photocopying and selected news accounts), it remains to be seen whether this approach can work as a viable commercial venture.

One strategy for dealing with this problem has been developed in Los Angeles (and presumably elsewhere). Independent school counsellors have come into the market offering, for a fee, to provide help to families in selecting a school program for their children. (Usually, according to the L. A. publicity, we seem to be talking about choices among private schools, but the general point applies.) To try to avoid losing the value of their information that would occur if one paying family simply passed on information to friends, these counsellors adopt an individulized appraisal approach in which they assess the child as well as the schools. Among other things, this is meant to convince people that their child should be personally evaluated too. For those who want only to buy the information about schools, however, this tied service approach may be too costly.

In any event, as Lillian Svec Clancy discovered, if one is to do a guide to many schools, it is extremely efficient to gather data from the schools themselves.

(One could, of course, like a restaurant critic, try lots of schools out, or failing that, interview current users; but this, of course, is quite expensive.) But for that to happen, the school people themselves have to be willing to disclose information to the private disseminators. And if Clancy's experience is any indication, even the most polite requests are often rebuffed with inattention, suspicion, active opposition, and perhaps valid claims of overwork. In short, private disclosure is not likely to be very successful if public schools are able to fight off organized private inquiries. (Another risk that looms in front of the Clancys of the world is that the public school officials, if they ever choose to, could rather easily undermine the market by issuing a separate booklet themselves and giving it out free. If it ever came to this, of course, it would mean that private threats had prodded public disclosure. But in the meantime the fear of such action may make would-be private information providers rather timid.)

A further problem here lies in who is reached with private disclosure. Hence, for distributional reasons public disclosure might be thought a desirable supplement to private information dissemination. For example, maybe the poor now fare badly in the private information market and could benefit from a public supplement designed with them in mind.

Trying to improve the quality of choices made about schooling assumes, to repeat, that there is at least some substantial commitment to the advantages of giving choice where it is now available. Given that assumption, however, it should be clear that increased disclosure might help children and families better pick teachers, courses, programs, schools and the like.

II. Control of Abuse and Consent of the Governed

Increased public disclosure about school sorting might curb sorting abuses or deter their outbreak. It might also make the public at large feel that public schools are more accountable to them and thereby better secure their general support. In this section, we will talk about how the ideas described in Chapter 4 generally apply to the school sorting setting, again reserving for later a more balanced appraisal of prospects.

A. Sorting Abuse

The traditional kind of abuse that can occur in the sorting process is treating pupils at variance with the rules, or put differently, not applying the rules evenly. An example would be a junior high counselor singling out a "favorite" student for advantageous placement with particular teachers in a system that was supposed to make placements randomly. Simply put, the objection here is that you are unfairly treated worse than the rules provide or that someone else is unfairly treated better than the rules provide. Abuses of this sort may be the product of class discrimination; e.g., boys are given first choice of course electives in violation of the rules. Alternatively, these abuses may be the product of individual arbitrariness. The latter can be quite conscious and deliberate -- as in the "favorite" pupil example given above -- or they can be essentially mindless. Thus, "abuse" for these purposes includes what often might be called administrative errors.

Information can help check and uncover such abuses. Sometimes, when the rules are clear, abuses of this type are easy to detect -- say, if all black children are in the same class when assignment is supposed to be random. Other times access to independent data will readily reveal such abuses -- say, if access to advanced English is to be by test score or if access to electives is to be on a first come-first served basis. In short, when the rule calls for the routine application of a clear criterion, one can sometimes convincingly demonstrate that the rule was not followed without cross examining the person who did the sorting.

When the application of the rule calls for individualized judgment, however, deviations are more difficult to detect. Hence, if assignment to third grade teachers is supposed to involve spreading around the "leaders" and the "troublemakers," from the final sorting alone it is likely to be difficult to detect from the sorting decision alone that, say, student X was intentionally mislabeled a "leader" or "troublemaker" in order to achieve a certain assignment -- out of either kindness or nastiness. Or, if intra-district transfers are to be approved when "child care needs are compelling" and a family's application is turned down, it may be very difficult to tell that the decision was actually based on the decider's personal dislike of the child. That might well require knowing details of other cases so as to establish what "compelling" has meant in practice. In sum, while disclosure may both deter and provide proof of abuse, different abuses will require different sorts of information to combat.

Generalizing, one might say that the detection of abuse sometimes requires little more than that the rules are known. That is, one might readily be able to show a rule violation either to a single child or a class of children by knowing both the rule and straightforward facts about the child or children in question; e.g., ten football playing sophomores were let into the arena scheduling scramble early, despite rules calling for entry by strict seniority. On the other hand, often knowing the rule isn't nearly enough. For example, when a change of teachers is supposed to be allowed once the year begins only when the child "needs a fresh start," knowing the rule may be quite insufficient to show that someone was unfairly denied a transfer or unfairly granted one.

Rather, detailed knowledge about the basis for the judgments is required; and note that this probably means knowing a combination of both the rules of thumb that are used to define "needs a fresh start" and the many facts about the pupil in question upon which the judgment as to need is supposed to rest.

For those who engage in abuse it is therefore probably preferable that the rules be couched in judgmental terms, since more detailed and harder to get at information is needed for detection. Put less cynically, because control is harder, the opportunities for abuse are probably greater when the exercise of individualized discretion is called for.

Some timid school leaders will prefer simple rules both so that they have a ready and consistent explanation for their decisions and so that they don't have to go out on a limb. Yet other school officials will prefer rules that give them substantial discretion, not in order to engage in corruption, but rather because of a belief that individual circumstances make the application of simple rules itself unfair -- or at least unwise. That is, a commitment to the need for, or at least desirability of, individualized treatment creates a reason for having either a vague standard altogether or else a discretionary exceptions policy. Indeed, at least where there is not too close scrutiny of his actions, one who favors such individualizing might well make exceptions to clear rules even without official authority to do so and justify them to himself on the ground that they in fact represent sound professional judgment.

To be sure, critics might doubt that benefits can actually be achieved through such individualized treatment, and see that increased chances for error and abuse are created thereby. In short, we are talking here about differing opinions as to management styles. These opinions may be held about bureaucracy generally or they may reflect judgments about either the talents of people who are school deciders and/or the potential costs and gains from individualization in the school sorting setting. The main point here is that a too ready rejection of discretion and the advocacy of simple standards so as to control abuse more easily may sacrifice real benefits of professional judgment.

Relevant here is how much abuse there really is. Unfortunately, we don't know. The field work we carried out was not intended to measure the incidence of sorting abuses. And, as our inquiries were directed at school personnel and since we didn't inquire about abuse, it would not be surprising if those who know of abuses would choose not to tell us about them. Nonetheless, here and there we did have comments volunteered that indicate that some abuses do exist, and we repeat some of the stories here. Of course, these comments reveal nothing of the true frequency of such conduct or if those actions reported to us reflect the actual pattern of abuse. But at least they provide further examples of abuses to which the sorting process is subject.

One sensitive area often commented on has to do with the assignment to elementary school teachers. We were told of instances in which, contrary to policy, one teacher was loaded up with a disproportionate share of the troublemakers or, the opposite, was given an unfair share of the best students.

We were told of administrators who grant transfer requests under a de facto policy of favoring personal friends of the administrator. We learned of teachers who block high school student access to their class (by falsely claiming it is full) in violation of the rules. We learned about school officials who knowingly looked the other way in some false address cases in violation of district policy. We've heard of central office secretaries qiving wrong or incomplete information about elementary school attendance access and of counsellors fouling up records so that students don't get in to the right classes. These latter sort, of course, are more likely best described as "errors."

B. Consent of the Governed

This point in the discussion, we think, nicely brings us to what could be seen as a quite different sort of abuse that can occur in the sorting process. It is the adoption of an objectionable rule. The gravamen here is not failure to apply the rule, but the contrary. One source of objection may be that the rule either allows for or bars exceptions. In short, the policy judgment to permit discretion or not can be controverted. Other objections may be made to either specifics included in the rule -- e.g., "It is wrong to have advanced math classes" -- or specifics absent from the rule -- e.g. "It is unfair to allow school transfers for child care needs but not for bus route convenience," or "It is unfair not to allow teacher requests in junior high."

We are talking here, of course, about objections to "legislation." And we recognize that "abuse" is not the usual term for it. But, if policy is the product of unchecked bureaucratic decision-making -- and especially if the actual policy is unknown -- then its adoption may well be termed abusive. Perhaps better put in terms of our four models , secret and objectionable school sorting policies undermine the consent of the governed.

Note that there is a substance and procedure distinction here. Some might object to a policy of, say, hand programming the junior high schedules of "difficult" children because it was quietly adopted and not known to those subjected to it; this is an objection to process. That it can be defused through disclosure is readily apparent. Others might oppose such a policy, even if openly enacted by the school board; this is an objection to substance. Here the potential of disclosure is indirect: initial disclosure may change the decision actually made; subsequent evaluation of the policy and disclosure of the results may win over objectors or cause the policy to be reversed.

III. Outreach v. Access

One final idea needs attention before completing this chapter. It is the difference between outreach and access. Disclosure to some means that when one asks one is told by the party having the desired information. This is the Freedom of Information Act model. To others disclosure means the affirmative action to inform target audiences without waiting for them to ask. This is the food labelling model. To some, outreach is always better than access, whether we're concerned about the consent of the governed, curtailing abuse, informed choice or the take-up of entitlements. The main problem, of course, is that outreach is more expensive. In addition, outreach requires that those who are disseminating know what to reveal, and this can pose great problems and create controversy. We also have to be careful that disseminators don't rig the data so as to mislead and thus undermine searching inquiries that would otherwise be forthcoming -- this is a distinction between disclosure and propaganda.

In sum, in proposing a policy of disclosure you have to pay careful attention to the nature of the disclosure you advocate, always aware of its costs. This awareness, we think, provides a good bridge to the next chapter.

CHAPTER 6

THE COSTS OF DISCLOSURE

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Chapter 6

THE COSTS OF DISCLOSURE

In the prior chapter we sought to show in broad outline how the values claimed for information generally could be relevant to school sorting. In so doing we meant to look on the bright side -- exposing possible benefits. In this chapter we try to bring together general doubts about the sensibility of disclosure as a school sorting reform.

1. Dollar Costs and Who Bears Them

The most straightforward of the "costs" of disclosure are the out of pocket dollar costs of providing the information -- labor costs, materials, printing, etc. That it costs money, even lots of money, to inform doesn't tell us very much, however. After all, in many circumstances the socially undesirable thing is to fail to spend public dollars. Put generally, then, it is first a question of whether the benefits will be worth the costs and second, whether the burden of the costs will be fairly born.

As we noted earlier, since spending on disclosure about school sorting is broadly to be justified as a "public good", reformers must show that the current political solution is the wrong one. Given the realities of the political context, disclosure about schooling will be considered and evaluated as part of the schooling enterprise. Initially this would seem to mean that one seeking change must convincingly show either that there is some existing school spending that should be redirected toward disclosure, or that new school taxes are justified to fund added disclosure. But perhaps this focus is too narrow. In theory, both other school reforms and all other forms of consumption also compete for these tax dollars; moreover, if one uncovered waste in the existing system, one response is that spending on schooling should simply shrink. Hence, it is arguable that one advocating disclosure should have the broader task of comparing public spending on disclosure with everything else.

In the real world, however, public goods proposals are often put to a more practical test. Rather than a full evaluation of all opportunity costs, a sufficient combination is often an apparently positive cost/benefit tradeoff, an acceptable or invisible distributional impact of the costs, and an important sponsor or two. Since the vagaries of local politics, especially educational politics, is not our topic this suggests that our focus should be on (a) a rather narrow cost/benefit appraisal of any disclosure proposal and (b) an evaluation of the burden of the costs.

Even the latter is largely elusive, however. Think of costs simply as money and human attention being diverted from other pursuits. Those who would have benefitted from such alternate pursuits are the ones who bear such costs. Is this burden fairly born? Two criteria for such an evaluation are: (1) do those who bear in turn benefit? and (2) is the distributional impact (A pays to benefit B) just? Yet, it is likely to be enormously difficult to determine just who will bear the costs of disclosure added on to public schooling. Since we would be talking about a small addition to an ongoing and changing program the true reallocation of resources that occurred will be highly ambiguous. Is the burden born by those who pay the relevant tax (or who really bear the incidence of the tax formally paid by them)? Or is it born by pupils and/or employees in the school system through, say, abandoned programs? Or is it perhaps born by welfare or medical assistance beneficiaries who lose out in order to balance a state budget? These inevitable ambiguities make it hard to say anything more specific about the burden fairness issue. Thus, we are left largely with trying to assess the cost-benefit aspects of disclosure itself, and the remainder of this chapter will be addressed to generalized aspects of the negative side of the balance.

II. Professional Demoralization Risks

More than dollar costs are at stake in a school disclosure scheme. Some of the dollar cost will be in the form of personnel time. And even if there is budget provision for new personnel, we are confident that existing staff - actual people - will inevitably bear some of the burden. Hence their time, attention and energy will be redirected, even if some of the work they now do is newly paid for and taken over by others. And while dollars may be fungible, the enthusiasm and talent that workers bring to their jobs is not. In this way it can be seen that the receptivity of existing staff to reform ideas can importantly impact upon what it "costs" to be effective.

How are existing staff likely to feel about disclosure in the school sorting context? Who prefers his work to be exposed for others to see and criticize? Some do, of course, since it is through this process that one can win praise, achieve recognition, and convince oneself that one's efforts are valued. For many others, however, it is far preferable to be able to carry on unnoticed, not widely criticized and satisfied by one's self appraisal that one's work is good, or at least adequate. Most of us probably have some of each of these feelings inside us. Which dominates may depend on who will do the outside scrutinizing, whether we feel what is looked at represents a fair part of our work, how competently we feel we are performing and so on. The point for school sorting is this: perhaps school administrators, counsellors and teachers could be made to see for themselves that fully to reveal their actions to the public would be good for them (as well as good for school children); but only "perhaps." These officials are accustomed to having the sorting process function rather quietly and might well find increased parental intrusion quite unwelcome -- many could understandably see it as noseyness backed by mindlessness. In short, the idea of disclosure to parents may seem a professional insult. Such feelings could both impose demoralization costs if reform were tried as well as make it difficult to implement such reform.

But there is more. Apart from such opinions and feelings of self esteem, we must be concerned about how disclosure would impact on professional conduct generally. In Chapter 5 we talked of the benefits of changed behavior; but there is a dark side. Disclosure risks rigidity, going by the rules, simplifying the rules, etc. -- in short, destroying professional judgment. That is, one way that disclosure becomes less threatening is when nothing very important about you can be disclosed; and that can occur if, for example, we start to randomly assign children to third grade teachers rather than trying to do so through careful judgment. Pressure toward such results would be countered, of course, if school officials and families thought individualization was desirable, especially since parents would otherwise learn it had been abandoned. And, as noted earlier, the abandonment of individualization would be welcomed by those who see its use today as doing more harm than good; maybe undermining some professional judgments now made in the sorting process is a good thing. In short, the tendency toward simplicity that disclosure might yield is both complicated and ambigious as to its desirability.

III. Potential Differences in Benefits by Class

A related ambiguity arises from the risk that a disclosure strategy will be effective for some children and their families but not for others. Suppose as a result of increased disclosure efforts, some children are spared abuse or have better choices made for them etc., but there is no impact on other children and their families. Of course, this scenario raises general concerns of partial effectiveness; but beyond that is a fear that the differential impact will be class or group related. Whether there will be such an impact or which direction it will run is by no means clear, however. On the one hand, it is often charged that better educated and richer families benefit more from information because they are more accustomed to making informed choice, they are better positioned to manuplate or control the political process to their advantage, and, because of education and financial security, they are better equiped to understand and act on the information that is likely to be provided. Engledow has painted this portrait of the Consumer Reports subscriber. He found him or her to be "part of an educational and income elite . . . he is information-sensitive in general and product and consumer information-sensitive in particular . . . he is a 'rational' buyer in the traditional sense . . . uses more utilitarian, performance-related choice criteria in shopping."[1] At the same time it is sometimes claimed that the poor are less "rational" -- that they are unaware of the benefits of comparative shopping, and that they indulge in status-seeking and escapism in their buying habits.

On this view, the risk is that poor children will suffer relatively when gains are achieved by wealthier ones. If true, this presents the policy maker with a moral dilemma: is it just to hold back a benefit from one child, to choose to make him worse off, in the name of distributional equity? Of course, coerced public schooling does this all the time through the existing sorting process; the interests of individuals are balanced to achieve someone's view of the most desirable result for the group. Its frequency does nothing to avoid the dilemma, however.

Yet, it is by no means sure that the rich rather than the poor would benefit were an information disclosure plan adopted. After all, by the reasoning usually used, the more upper class families are likely to be the main beneficiaries of the existing information networks -- formal and informal. Maybe they have little more to gain through more formal disclosure efforts; if so, the more likely positive impact would be to catch up and advantage children from lower class families. Were this to occur, we doubt that there would be serious objection on distributional gounds. To be sure, we would predict that their would be concerns that the costs of the plan would be taken from programs already aimed at the poor. If so, the issue would be converted to one of relative merits. In any case, the class direction of the benefits of disclosure is an empirical issue; in the end, we suspect, the result would turn on the details of what is proposed and how it is implemented and would not reflect some general rule.

Existing evidence on this question certainly does not prove the fears of those worried about the impact of disclosure on the poor. For example, McNeil et. al., in an econometric study of used car markets in three states, found

> "1. the poor's subjective dissatisfaction reflects their objective disadvantages;
>
> 2. the poor detect defects before purchase as often as do the non-poor;
>
> 3. the poor discover as few or as many defects after purchase as do the non-poor;
>
> 4. the poor complain about such defects at even higher rates than do others."[2]

IV. Possible Ineffectiveness Generally

A different scenario, of course, is that in practice little benefit at all would arise from increased disclosure despite the room theoretically for gains. What we want to discuss here is the general problem of ineffectiveness in implementation. Such a result would mean a waste not only of money, but also of a political opportunity; educational reform capital, after all, can be expended only so often.

A. Studies of Consumer Disclosure Laws

One cause for alarm is the mixed record of existing consumer disclosure laws. That is, notwithstanding the popularity of such programs, a number of studies have failed to demonstrate their effectiveness.

The increased popularity of information disclosure requirements in the regulation of consumer trade markets has spurred policy research concerning its effects, and we look to these studies first. The analysis has in part been hampered by disagreement over the objectives of disclosure in the programs studied. Although we noted a variety of goals for disclosure about school sorting in Chapter 5, most of these disclosure studies look primarily at the effectives of disclosure in improving market performance.

In order for disclosure to improve market performance, consumers must have access to readily comprehensible information that is relevant to the choices facing consumers. This information must change consumer behavior in a way that consumer satisfaction is increased. In part, producers should be responding to changes in consumer behavior by producing superior products.

The findings of the studies that have been conducted are mixed. Many have found that information disclosure enhances the confidence consumers have in the products they buy and in their producers, but that market behavior by consumers is not changed.[3] For example, Whitford found that the disclosure of effective interest rates by lending institutions as required by Truth-in-Lending laws had no effect on the behavior of borrowers.[4] Day and Brandt similarly found that borrowers were not more disposed to engage in comparative shopping for credit terms subsequent to adoption of the truth-in-lending laws. In their survey, 57 per cent of credit buyers were aware of the disclosure requirements, 54 per cent reported that they felt better about their credit terms as a result, but that only 10 per cent claimed to make use of the data in the sense of seeking out better credit terms.[5] The authors concluded that a negligible relationship existed between knowledge of the effective rate and the choice of a credit source.

In a statistical analysis of one of the first disclosure requirements, the requirements for disclosure of financial prospectuses by the Securities and Exchange Act of 1934, Benston concluded that the requirements have no effect whatsoever.[6] "The Act had no measurable effect on the securities traded on the NYSE. There appears to have been little basis for the legislation and no evidence that it was needed or desirable."[7] Kripke concurs, stating "the Securities Act of 1933 is not operating as it should . . . the prospectus has become a routine, meaningless document which does not serve its purpose . . . The real problem with the statutory prospectus is not that it is unreadable but that it is unread. It is unread because it does not contain the information which the investors consider crucial to the investment decision."[8] In a survey by Lenahan, et. al. only 26 per cent of shoppers were aware of the existence of nutrition labeling on foods, only 9 percent claimed use of the data, and no evidence was found of changes in consumer purchasing behavior as a result of disclosure.[9]

Some studies of disclosure, however, seem to have uncovered a link between information and action. Unit pricing, for example, is considered to be an example of information disclosure which changes consumer behavior. Ross, in a review of unit pricing studies, found that between 60 and 70 per cent of shoppers were aware of the existence of unit prices, that 50 per cent understood the concept and that 5 to 38 per cent claimed that their purchasing behavior changed as a result of this data.[10] Open dating of perishable foods also is considered to be an effective means of increasing consumer purchasing power. Stokes, et. al. reported that 65 per cent of shoppers noticed the dates, 36 per cent correctly interpreted them, and that a 50 per cent reduction in spoiled food losses occurred subsequent to adoption of disclosure.[11] The success of these particular disclosure systems may be attributable to the facts that the data is readily accessible at the point and moment of purchase and that the meaning of the data is easily comprehended and relatively unambiguous.

There have been problems with certain systems that provide confusing, ambiguous, or misleading information to consumers. USDA beef grading is an example of such a system. Mittlestaedt found the USDA's seven-tier system of grading to be of little use to consumers because most retail foodstores sell only the top one or two grades and because the basis of the gradings -- marblized fat content -- is no longer considered relevant by nutritionists to determining beef quality.[12]

At a minimum we see from these studies that carelessly designed and implemented disclosure schemes can easily fall short of their goals. We also must recognize that measuring producer changes is difficult in surveys that concentrate on buyers; thus, even though buyers don't seem to be acting on information, beliefs or fears that they might can alter what producers actually do. Yet sorting out these changes from those caused by other forces is extremely difficult to do.

Indeed, a major disappointing feature of those studies that have been conducted on the effects of disclosure is that they have generally failed to address the question of supplier response to disclosure. Moreover, to assert that "only" 10 per cent of consumers change their purchasing behavior in response to information disclosure misses an important point. It is not necessary for all consumers to be affected by disclosure for market performance to be improved. For products where tastes are relatively uniform and the industry structure is competitive, a small portion of the consumers can effectively "police" the market; 10 per cent of the consumers may be more than enough to control supplier behavior.

This has implications for equity concerns as well. In some cases, improvements brought about in response to information-induced pressures created by the "rich" can bring equal benefits to the "poor". This depends, of course, on the details of the situation. And hence we leave this brief review of past research on consumers and disclosure generally with a sobering concern about ineffectiveness and a belief that details count for a lot.

B. Studies of Governmental Disclosure Laws

Some evaluations of schemes that require disclosures by government have also been disappointing to information enthusiasts.

The primary study we will summarize is one about the Illinois Freedom of Information Act conducted as a joint effort by the Northwestern University Law Review and the Northwestern University Center for Urban Arrairs between August, 1971 and June, 1972.[13] The authors assume that while public information disclosure and accessibility to government are socially desirable, there exists within most branches and agencies of the government, "whether out of bureaucratic lost-sightedness, or personal motives of secrecy and manipulation," a "common belief" to the contrary. That is, the authors assume that those who govern are afraid that public information will lead either to a sharing of existing governmental power with the public or accountability to the public and that these outcomes are jealously resented. Hence the common bond of the bureaucrats is "how not to make public information public."

In the introductory essay in the collection G.L. Engel reviews the evolution of public information policy in America. He then shows how agencies can withold information, thus avoiding and subverting the goals of the law, and quotes one observer who claims that nine of ten refusals of information by agencies are invalid.

One explanation for opposition to disclosure, he suggests, lies in traditional norms -- " . . . federal agencies need not tolerate searching inquiries or even routine inquiries that appear searching because of their infrequency." Another second reason is the widespread ignorance of the legal duty to disclose. But, most important, it seems, is the self-interested sensitivity of agencies and officials to public image which determines their success, prestige, and power relative to other political actors, whether it be Congressional watchdogs or regulated business enterprises. Hence, secrecy increases in direct proportion to sensitivity. This fact alone, he argued, explains much of agency responses to information requests.

Explaining further, Engel says that agency heads are committed above all to protecting the agency's reputation, and often exercise great personal power to insure that subordinates do not embarrass, or reveal damaging information about, agency actions. Threats of job loss are only the most extreme means which can be wielded in this way. Internal pressures also matter, and desires for secrecy stem from political allegiances within agencies concerned about patronage obligations, personal security desires, collegial ties of work, and organizational self-interest. Finally, when an agency supports policies that it fears will be unpopular if well understood, secrecy helps officials to continue without challenge. While these explanations of agency resistance to disclosure can be used to show the need for strong disclosure laws, they also prepare us for implementation obstacles.

Engel next turns to these obstacles, discussing a dozen or so tactics of bureaucratic avoidance, obfuscation, and neutralization. For example, variable fees can be charged to discourage inquiry; in particular, fees may be set relative to the perceived threat of the inquirer. In addition, understandable legal rules that agencies honor only requests for "identifiable records" can be perverted by requiring that inquirers have specific and often unavailable details such as letter dates and file titles of documents. Another tactic of circumlocution is to "hide" sensitive information in non-obvious offices or agencies, increasing the already difficult problems facing outsiders in tracking down the proper place to make requests. A further strategy of agencies is to comingle sensitive non-exempt information with exempted records as another means of "hiding" knowledge. The widespread use of computers in many agencies renders this task of "hiding" information from the sight of all but the experts an even greater problem.

Another obvious tactic is the practice of failing to record data. This can take the form of dealing informally with what was once formalized. A related ploy is to release incomplete information in the hope that inquirers will be satisfied. More blatant, of course, is to censor or alter information before disclosure or, simply to lie about the existence of records which the agency wishes to protect. Finally, the simplest tactic is delay in an effort to discourage inquirers.

Engel argues that the means by which "government officials at all levels in many of these agencies have systematically and routinely violated both the purpose and specific provisions of the law" are both copious and widely utilized.

The empirical case studies which comprise the bulk of the Northwestern publication confirm this general overview of agency capacities and behavior in relation to citizens seeking information and access. The researchers engaged in an experiment designed to test the effects and effectiveness of Illinois public information disclosure laws.

The experiment itself involved two stages. First, five letters from fictional citizen groups -- 2 right-wing, 2 left-wing, 1 neutral -- were sent to more than 20 local and state agencies requesting information clearly defined as within the states disclosure laws. A balanced distribution of "hard" and "easy" to locate information was sought. The goal of this part of the experiment was to document and generalize about the quantity, quality, and nature of the responses to such requests.

In terms of quantity, 50 of 111 requests were answered. 20 of the responses were to the most innocuous requests, thus justifying the expected generalization that information harmless to an agency is the easiest to get. As for the quality of responses, the main conclusions as were that: 1. left-and right-wing inquiries were treated generally the same, although leftist groups got less propagandistic treatment; 2. progressive and positive-style names of groups ("Impatient Society, Etc.") got better quality responses than anti-government groups ("CAMPAIGN AGAINST GOVERNMENT ABUSE"); 3. the seeming hostility of requests reduced frequency and quality of responses; 4. extremists on both the right and left tended to be treated like "cranks"; 5. information "favorable" to agencies was disclosed in greater quality and quantity, even when it was more difficult to obtain than "easy-unfavorable" information; 6. big, old agencies and new, small agencies showed a roughly equal willingness and capacity to respond or not.

The second part of the experiment studied the behavior of agencies when visited by observers in various predetermined manners and roles. To each of 9 of the agencies, 5 visits were made, following up on the letter requests. The visitors puported to be (1) a student writing a term paper; (2) a non-aggressive, naive representative of one of the fictional citizen groups; (3) an aggressive, well-informed group member; (4) a representative group member with research assistant; (5) an acknowledged Review member. In their analysis of the results, Heinz, Gordon, et al, emphasize the importance of the perceptions that bureaucratic "keepers" of information had about the "seekers" -- whether they were friends or enemies, sought conflict or cooperation, were onetimers or regular players in relation with the bureaucracy. The less the agencies presumably saw it as in their self interest to cooperate, the more bureaucratic circumlocution tactics of the sort Engel discussed were engaged in.

However, the authors' analysis of the case studies also suggests that skills, tactics, and resources of the "seekers" are also important to the dynamics of disclosure. The first dimension of strategy which they discuss is about power/leverage relationships. For those citizens lacking in important institutional resources and information desired by the agencies, the authors note that threats of publication, exposure tactics, legal action, and bribes all provide influential leverage in dealing with officials. A second strategy which the authors determined as effective for "seekers" from the experiment is the "short-circuiting" of agency fears and defensive mechanisms by innocuous, deferential, and cooperative action. The studies confirmed that camouflaging intentions, exuding a sense of trust, and clever exploitation of vulnerable leakage points -- in effect following the path of least resistance -- were quite effective tactics. In contrast, aggressive, overbearing, and uncooperative attitudes by seekers only set the agency curcumlocution machinery into high gear.

Of course, experience with laws under which citizens *ask* for information may not be fully relevant to school sorting disclosure proposals which put *affirmative* outreach duties of school officials. Moreover, school officials may perceive families wanting information differently from the way other agencies that have been studied perceive those seeking information from them. But maybe not. In sum, these findings about freedom of information acts ought to serve as a warning to one who otherwise idealistically might assume that merely to impose on school officials a legal duty to disclose will actually result in the spirit of the obligation being followed.

V. "*Excessive Information*"

In contrast to the previous worry, there is a cynical, some would say realistic, view about information disclosure that argues that a disclosure scheme may produce more information than "people want." The lament here is far broader than that dollars are thereby wasted. This argument, in effect, attacks some of the central claims in favor of information. One taking off point is an assertion that Americans trusted government more when they were more naive about it; exposés and attempts at accountability, it is charged, lead to disillusionment and cynicism rather than the hoped for consequences of greater satisfaction and feelings of responsiveness. If to this is added the claim that abuse of discretion will continue unabated despite disclosure, one can be led to the grim conclusion that knowledge is dangerous. Even along the dimension of family choice it may be argued that too much information befuddles and overwhelms consumers whose real choice strategies stem from a model of bounded rationality. (And this assumes that one affirmatively believes in the virtues of family choice, a debatable matter itself, as Chapter 5 exposes.) Hence, as explored in Chapter 4 in some circumstances rational parents may prefer, not information, but instead to delegate the sorting choice to others.

In short, it is quite plausible to look cynically at both our political and our market or quasi-market institutions and to reject the practical effectiveness of information, whatever its theoretical effectiveness; indeed, as an outside observer one can formulate a set of arguments to the effect that ignorance indeed keeps one relatively closer to bliss.

Whether acceptance of this perspective should lead one to seek revolutionary change, to throw up one's hands in defeat, or to enjoy the status quo (assuming you're in the favored class), is beyond our scope here. In any event, we are not willing simply to accept this broad perspective on the world as a devastating argument against all disclosure schemes, let alone against disclosure about school sorting. Indeed, at a time when public regard for public education is so low, it is hard to see from these lines of thought how there is a great deal at risk. Moreover, a bit of evidence about attitudes towards schools seems to be contrary. As we understand it, surveys show that when families "grade" public schools, on average they consistently give higher grades to their own child's school (which they presumably know relatively more about) than they do to public schools generally (which are probably understood less well); in short, information may well bring fondness rather than bitterness. Still, there is a warning in this cynical/realist viewpoint; we ought to be confident that there is genuine promise of social gains from disclosure before risking that the relatively better impression people seem to have of their local public school is not lowered to the level of public unhappiness and frustration with public schools generally.

With this survey of a range of potential costs of disclosure generally, we have completed our review of pro and con perspectives on our problem. In the next chapter we combine the considerations and show how sensibly to go about conducting a policy analysis of school sorting disclosure.

FOOTNOTES

[1] Engledow, "The Consumer Reports Subscriber: Portrait of an Intense Consumer," Indiana Business Review, Vol. 47 pp. 32-40.

[2] McNeil, et. al., "Market Discrimination Against the Poor and the Impact of Consumer Disclosure Laws: The Used Car Industry," Institute for Research on Poverty Discussion Paper #486-78, University of Wisconsin, Madison. p. 27.

[3] For an overview of the research performed, see Day, Assessing the Effects of Information Disclosure Requirements, J. of Marketing 1976.

[4] W.C. Whitford, "The Functions of Disclosure Regulation in Consumer Transactions," Wis.L.Rev. 1973, no. 2, pp. 400 et. seq.

[5] Day and Brandt, "Consumer Research and the Evaluation of Public Policy: The Case of Truth in Lending," J. of Consumer Research, 1:21, June 1974.

[6] Benston, "Required Disclosure and the Stock Market: An Evaluation of the Securities and Exchange Act of 1934," American Economic Review 63:132.

[7] Ibid., p. 154

[8] H. Kripke in Manne, ed., Economic Policy and the Regulation of Corporate Securities (1969).

[9] Lenahan, et.al., "Consumer Reaction to Nutritional Labels on Food Products," J. of Consumer Affairs 7 Spring 1973.

[10] I. Ross., "Applications of Consumer Information to Public Policy Decisions," in Marketing Analysis for Societal Problems, Sheth and Wright, eds. (1974).

[11] R.C. Stokes, et.al., Food Dating: Shoppers' Reactions and the Impact on Retail Foodstores, Report No. 984, USDA Economic Research Service, 1973.

[12] R.A. Mittlestaedt, "Consumer Protection and the Value of Information," Proceedings of the Assn. for Consumer Research pp. 101-106.

[13] The results appear in 68 Northwestern Univ. L. Rev. 177 (1973).

CHAPTER 7

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CHAPTER 7

SCHOOL SORTING AND DISCLOSURE - POLICY CONSIDERATIONS

In this chapter, we put together the discussions of the prior chapters in a policy framework. The framework is used to explain how we think one should go about appraising the desirability of different amounts of required information disclosure. We illustrate the framework in some detail by focusing on the process of pupil assignment to teachers in elementary schools. The same method can be applied to the other steps in school sorting that we have considered, and we briefly illustrate that later in the chapter.

Our analysis does not, and cannot, say what, if anything, *should* be done. This is primarily because a number of key issues turn on values about which we are reluctant to say there is but one "right" answer. For example, if family choice is enhanced, people will differ on its desirability; if confidence in schools is increased, people will disagree about its worth; if official discretion is reduced, people will not agree whether that is good or bad; they will also disagree about the desirability of the "trade off" of some subjective costs as against other subjective benefits; if the prospects for altering substantive school policies are improved, people will dispute the desirability of that; people will further disagree over the desirability of changes that have differential impacts by class; and so on.

Value conflict, however, is not the only obstacle to satisfactory policy analysis. Although our research has taken us well into the problem of school sorting and disclosure, there remains considerable uncertainity about what would be the consequences of any required dislcosure scheme because both implementation problems and how people would react remain largely speculative. Moreover, as countless varieties of disclosure regimes could be proposed, it is not easy to confine the analysis to anything approaching a stable target. As a result, critical factors such as who would bear the costs of any change cannot be pinned down.

In short, because of factual and value indeterminacies, we can not coherently say that any specific amount of disclosure is in the "best interest" of children. We can, however, present a compact approach to the problem that will show policy makers where to plug in their own values and where to make their own predictions about (or find out more about) consequences. And while presenting the framework, we provide our own tentative evaluation of required disclosure, given our values and our current knowledge.

I. The Policy Framework

A. Types and Levels of Disclosure

The first critical thing to keep in mind is that information disclosure is not a yes-no proposition; you don't simply either do it or not. Rather, it is far more importantly a question of how much, or what, information. Also key are the medium of disclosure (e.g., written or oral), its trigger (e.g., on request or school initiated), whether transmitted before or after decision, to all or selected families, and so on. In order to begin to account for these varieties, and simplifying somewhat, we think it helps to identify three categories or types of disclosure.

The first type is the disclosure of general information about the school's decision-making process. Moreover, we distinguish four levels: (a) the criteria used to make the sorting decision (such as sex and ability balance in elementary school classrooms); (b) justification of the criteria (why, say, ability balance is thought desirable); (c) the process of applying the criteria (for example, who does the ability balancing and how); and (d) the decision alternatives that are possible (for example, that there are three second grade classes to fill).

The second type of disclosure is child-specific information. Here we distinguish two levels: (a) the child's classification by criteria (his ability level, for example); and (b) an explanation for that classification (say, how his ability was determined)

The third type of disclosure concerns information about the characteristics of the possible decision alternatives (such as "What are the three second grade teachers' talents" or "How much do biology students learn?").

B. Five Key Questions

Having arrayed these types of disclosure, our next goal is to evaluate them in a way that at once takes into consideration the variety of costs and benefits described in earlier chapters. We think this is best achieved by considering five key questions:

(1) If this information were available and fully utilized, what social benefits could be achieved, viewed from the perspective of each of the models discussed in Chapters 4 and 5 (informed choice, take-up of entitlements, consent of the governed, and control of official abuse)? This question is meant to capture the potential direct benefits of disclosure in the abstract.

(2) How common is the disclosure of this information in the absence of requirements? Little new can be achieved by requiring the disclosure of information, even very important information, that is routinely disclosed anyway. Moreover, it

is not enough to observe that information has not be formally provided in the past. Parents may already have obtained the information through informal channels. This question is meant to focus more carefully on the potential additional gains from formally requiring disclosure.

(3) How likely is it that the disclosed information will actually change the behavior or opinions of the information recipient? For information to have impact, it has to matter. In terms of behavior, it is necessary to link the information to altered conduct of parents, children or school officials. Hence, if, for example, an important objective were to increase parental involvement in the sorting process, it would be important to be able to show, or at least predict, that information would truly yield such an increase. Since parents can be thought of as implicitly weighing the benefits and costs of their involvement in the process, one thing to consider is how the disclosed information would change parental perceptions of these costs and benefits. Similar inquiries can be made about the likely linkage of information to changes in opinion. The main point here is to focus on the realistic additional benefits of required disclosure. As we saw in Chapters 4 and 5, despite the theoretical connections between information and changed outcomes, there are reasons to think that in practice some information, in effect, won't be utilized.

(4) How much would school officials support or resist the passage and implementation of the disclosure requirement?

While the first three key questions look at benefits, this question is intended to serve as a rough indicator and aggregator of the *direct costs* that would be experienced by the school system. These costs could include dollar costs, professional demoralization costs, and other "costs" such as reduced socio-economic balance in the school population (see Chapter 6). To the extent that these costs are perceived by school officials to be significant, one would expect them to try to avoid them, first by resisting the initial adoption of the requirement and later, if need be, by implementing the requirement in a manner that is least costly from their viewpoint. This assumes that the costs of disclosure would be borne primarily by the local school districts and schools. Of course, it is imaginable that the dollar costs could be paid for by the state and/or that other sweeteners could be thrown in to win over local support for a new program. But then, of course, these costs would have to be borne elsewhere; here, in order to simply the analysis and because we believe it is more revealing, we will assume the local internalization of costs.

(5) If certain disclosures were required, might this cause schools to alter the sorting system itself? If so, are the consequences likely to be good or bad? This question is meant to focus on the *indirect* costs and benefits of disclosure.

The answers to these five questions can provide considerable insight into the prospects of achieving net social benefits through information disclosure. Suppose, for example, that some disclosure contains information characterized as theoretically important to achieving social benefits, generally unavailable at present, likely to lead to desirable changed parental or school behavior with respect to the sorting process, and not too costly to the schools. Clearly, this disclosure is a good candidate for policy adoption.

On the other hand, suppose a proposed disclosure rates well on the benefits side but would be considered very costly by school officials and would be strenuously resisted. From this we would conclude that the prospects for easy legislative approval of the reform are slight. Public school officials are much better politically organized than are parents (who are largely unaware of the stakes, and who, even if aware, would receive only small individual benefits in comparison to the high individual costs of political mobilization). However, if the social benefits of disclosure do outweigh its social costs, then either a concerted political effort or a legal challenge may be feasible ways to achieve the net benefits. Whether a reform movement could be organized around consumer disclosure in public schooling is hard to say. We will, however, have more to say about the relationship between information disclosure and the law in Chapters 8 and 9. In short, these five questions together allow one to assess both the desirability and political potential of a reform proposal.

II. Applying the Framework: Teacher Assignment in Elementary Schools

A. Potential Benefits From Disclosure

As explained above, the first key question calls for a consideration, for the elementary school teacher assignment process, of what are the potential direct benefits that could arise from the disclosure of different types (even levels) of information. We think it most fruitful to explore those potential benefits in terms of the models of disclosure discussed in Chapters 4 and 5.

A few caveats at the start, however. The actual sorting practices of a given school or district will affect the relative potential importance of one or another sort of information. For example, ability matching, parent choice and random assignment are three different ways to assign pupils to teachers; which a school uses or emphasizes changes the importance of information. Hence, in doing our analysis, we have, on occasion, had to make assumptions about school policy; for this we have drawn on our field research to capture what we take to be reasonably typical practices.

In doing the analysis for elementary school teacher assignment, we have found it most rewarding to start with one model of disclosure, (say, control of official abuse) and then with that model in mind to consider the various types of disclosure one by one. We then repeated the process for the other models. Alternatively, one could begin with a type of disclosure, say, general informtion, and consider first its potential usefulness in terms of each of the models; under that approach one would repeat the analysis for each of the levels or types.

As we explained in Chapter 5, the distinction between the models of take-up of entitlements and informed choice by parents is not an easy one where, as with public education, the state produces and gives away the benefit. Therefore, we there arbitrarily assigned to take-up the matter of general awareness of rights to participate in the sorting process, and to informed choice the question of informed participation. The consequence is that somewhat different information is relevant to each. But for purposes of our discussion here we have simplified and have lumped both models together.

1. Disclosure Alternatives -- Informed Choice/Take-up of Entitlements.

If schools paid no attention to parental input or preference, there would be no take-up opportunities and nothing for parents to make informed choice about. In that case, information would be of no real use for purposes of these two models.*/ But our study suggests that elementary schools do regularly accept and pay attention to parental preferences as to teachers. Would it therefore be a good thing if parents were well informed about their ability to participate in the process of deciding who their child's teacher will be (this is the take-up point) and if so, what information would best help them participate (this is the informed choice point)?

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* To be sure, publicizing both the absence of a parental role and information about the school's current sorting practices could indirectly create a political demand for a change in the sorting process that would include a parental role.

At first blush, it would seem evident that information has an important positive role here. Yet, as explained in Chapter 5, this is by no means an obvious conclusion because various underlying reasons can account for the fact that expressed parental preferences currently count. If, for example, one believes that parental input is something to be tolerated, but which in the end is not beneficial for the sorting process, then to the extent that disclosure promoted take-up of the participation option, even if on a more informed basis, it would be considered undesirable. On the other hand, if one believes that family choice is in principle important, then it would seem theoretically quite important for families to be aware of their ability to voice their preferences and to be able to do so in an informed way. Even then, however, it must be remembered, as we explained in Chapter 4, that rationally choosing families are often going to want to include the expertise of school officials in the decision process -- or put in other terms, they are going to want to delegate some of their powers to (or share some of their powers with) school officials. In turn, this means that providing information to the right school officials can be as or more important than providing it to parents.

Moreover, we saw that schools today, in general, seem to value parental choice only to the extent that classroom "balance" objectives are not seriously upset by it. Assuming that one agrees that such constraints are appropriate then it is possible that an existing workable arrangement whereby most family preference is accommodated, would become much less workable if take-up is increased, entailing serious frustration. Indeed (and this is really responsive to the fifth of our key questions), the exposure of the exercise of choice by some "in-the-know" families together with bureaucratic opposition to universal choice could possibly lead indirectly to a political change that would largely do away with parental input altogether.

Finally, assuming that informed parental input is desirable, it is important to appreciate that it can be justified on a variety of grounds. One is that parents can have special knowledge about their children that ought to be factored into the sorting process. Alternatively, it may be argued that parents know better, or at least ought to be able to decide, which teacher's style or which classmates their children should experience. This rationale makes parents judges of what quality means for their child. Finally, it can be claimed that parental input primarily serves instrumentally to promote good teaching by identifying (and somehow rewarding) those who are good teachers. Plainly, not everyone would accept all these justifications. We trust that this discussion suffices to illustrate how indeterminicies of fact and value mean that there can be no "right" answers here. We will proceed, therefore, simply to offer our answers.

In our judgment the information that is potentially most beneficial for take-up and informed choice purposes is first general information about the extent to which parental preference counts as a criterion in teacher assignment and about the alternative available assignments -- these go to take-up; and second, specific information about the available decision alternatives (relating to acutal teachers, classroom composition, etc.) -- this goes to informed choice. In other words, key here is generally knowing how much parental preference matters and what the options are, and then having the specific information that matters to parents in judging the fit between their child and a specific teacher and classroom.

2. Disclosure Alternatives -- Control of Offical Error and Abuse

Although we made no effort to determine the true extent of official error and abuse in the assignment of children to elementary school teachers, it is clear that the potential for such error and abuse exists, and that some types of disclosure have an important checking potential. To be sure, it may well be that an impressionistic sense of the error and abuse rate that is based on occasional reports would prove misleading when pursued in a serious study. It may also be true that the greatest promise for controlling what error and abuse that does exist lies in internal management strategy and not in external control through policing by clients. Nonetheless, with disclosure to parents, some deterrence is plainly imaginable.

For this disclosure model, in our judgment the most promising information lies in two realms. First, we would consider general information about the available alternatives and criteria used in assigning teachers and pupils together, and perhaps secondarily, about the process of assignment. This is because once people know the sorting criteria they have a standard from which they can charge that officials have deviated. If nothing else, this might help deter gross or class abuses; and it might inspire greater care in individual cases as well. Revelations about the process can help focus the limelight on the responsible actors and may thereby help to assure that they have behaved properly. This, in turn, can help minimize instances of favoritism or bureaucratic pettiness.

However, in order for there to be direct external control over the accurate assignment of individual children to individual teachers, then disclosure will usually be needed about both (a) what conclusions were reached about the individual child (that is, which criteria were applied to this child) and (b) how those conclusions were reached (that is, an explanation of why the criteria were met). Indeed, the greatest potential for checking error and abuse here would come if in every case an explanation for the individual child's placement were routinely proferred (and could be challenged). Second best, and possibly of nearly the same deterrence potential, would be the stated willingness to supply an explanation on request.

3. Disclosure Alternatives -- Consent of the Governed

In our judgment general information about the criteria governing teacher assignment, justification of those criteria, and the process of applying those criteria are potentially the most important in terms of this model. They, it seems to us, best reveal the aspects of the teacher assignment process that would serve to make families feel that this part of school sorting is fair and sensible; the criteria and process are also the things that people would probably want to have changed if they felt the current practices did not reflect popular will. Also of potential importance for this model, we think, is the disclosure of general information about assignment alternatives since this will let people know about the school's scructural decisions that determine the parameters of the sorting process.

4. Summary Table

Table 7-1 below captures at a glance our judgments described above. It reveals that the levels of information about teacher assignment that are theoretically most promising depend on the model or purpose one focuses upon.

Table 7-1

Potential Benefit from Information about Teacher Assignment in Elementary Schools

Disclosure Types and Levels	Greatest Potential Benefit in Terms of the Models*		
	IC/TE	CG	CA
1. General Information			
a. Criteria of assignment	X	X	X
b. Justification of the criteria		X	
c. Process of applying the criteria		X	X
d. Alternative assignments available	X	X	X
2. Child-Specific Information			
a. Classification by the criteria			X
b. Explanation for classification			X
3. Information about attributes of alternative assignments	X		

(*IC=Informed Choice, CG=Consent of the Governed, TE=Take-up of Entitlements, CA=Control of Official Abuse)

B. Current Voluntary Disclosure

In our field research, we attempted to survey the extent to which information about sorting is currently disclosed by California schools. Were the information we have identified as theoretical valuable in the previous section already widely available to parents, then little will be gained by requiring its disclosure.

We have found, however, that there is virtually no written disclosure of information about teacher assignment in elementary schools. That is, neither general information, child-specific information, nor information about alternatives is usually provided to parents in writing. The one small exception to this finding is in the request by some schools that parents indicate a preference for their child's teacher assignment, or for the type of teacher they prefer. Even in these cases, usually no information about either the alternative teachers or about how parental preference fits into the actual sorting process is offered in writing. As we saw in Chapter 2, those parents who put in requests tend to be those more active in school affairs who thereby get to know the teachers or those who find out about the teachers through informal channels (for example, other parents in the PTA, the parents of an older child in the neighborhood).

The lack of written information is not quite sufficient to conclude that the school simply does not inform the whole parent population about this aspect of the sorting process. After all, there are conferences scheduled between each child's parents and teachers twice a year, and plans and prospects for the following year are often discussed during the spring conference. It was beyond the scope of our field research to document what really is communicated during those conferences. It is quite possible that some information about sorting is disclosed at this time, although teachers are given no formal directives to cover specific items. In any event, it is quite likely that most parents would be offered no information at all about many of the levels described earlier; and surely most do not take the time to ask for this information when they are there mainly to get an assessment of how their child performed during the past year.

We tentatively conclude that the type of information embodied in the alternative disclosures we are analyzing is not commonly known to a broad range of parents. Therefore, current practice cannot be said to diminish significantly the theoretical benefit potential of these alternatives. In Table 7-2 we rate the extent of current disclosure as "none" for each of the disclosure alternatives except for the process of applying the criteria and the available alternatives. The latter two are rated "low" in light of limited school efforts to solicit parental preferences regarding teacher assignment.

Table 7-2

Disclosure Currently Provided about Teacher Assignment in Elementary Schools

Disclosure Options	Extent
1. General Information	
a. Criteria of assignment	N
b. Justification of the criteria	N
c. Process of applying the criteria	L
d. Alternative assignments available	L
2. Child-Specific Information	
a. Classification by the criteria	N
b. Explanation for classification	N
3. Information about attributes of alternative assigments	N

(H=High, M=Medium, L=Low, N=None)

C. The Probability of Changing the Behavior or Opinions of the Information Recipient

In order for information to achieve benefits, the disclosure must have or be perceived to have some impact on those who receive it. One type of impact would be a change in the opinion of parents about the school's teacher assignment procedures and in turn about the school generally. Simply put, increased awareness of general information about this process could by itself result in greater consent of the governed. This assumes that families will like being communicated with and will like what they learn. Plainly, if this is not true, disclosure could create not just discussion and consent but rather the "dissent of the governed" -- perhaps indirectly leading to changes in the sorting process and/or political conflict in the community. Yet we would consider either of these consequences to represent gains for the democratic process, recognizing, of course, that in terms of school official energy and school child short term learning, costs can well come with community conflict over some school practices.

One hope under the consent of the governed model is that the ongoing disclosure of information serves to keep officials continually accountable to the local political community so that official disclosure itself would not precipitate a surprise uprising of community opposition. (We also note in passing that disclosures that satisfy families that errors and abuse are at a minimum and that informed choices by someone, whether parent or school official, are being made about teacher assignment should both serve in a broad way to increase the consent of the governed.)

Additional impact occurs, here plainly behavioral change, if disclosure yields more active parental interaction with the school regarding the actual assignment of specific children; and even more impact occurs if sorting decisions are actually changed as a consequence. Finally, as our fifth key question alerts us to ask, a school may on its own change its sorting practices and decisions in response to its prediction of parental reaction to disclosure.

Athough we have sketched various ways in which impact can occur, will the information disclosure actually have any important impact in any of of these ways? How many more (and which) parents will question and press the school to justify their child's teacher assignment and with what impact on controlling errors and abuse? How many more (and which) will take up the opportunity to participate in the selection process and with what impact on informed choice? How will parental and community opinions about the school be altered and with what impact on consent of the governed?

Making sound predictions is very difficult. Yet certain things can be said. First, although school initiated disclosure of information to all parents surely has more potential to prompt change than does selective disclosure (it also has the highest cost), it should not be assumed indispensable. In short, one should not minimize the potential of information provided upon request to even a small number of families who ask for it. As we saw in Chapters 4 and 5, in the right circumstances relatively few informed consumers can serve to police the market and thereby improve consumer utility for many others as well. In the same way, an informed few can act in ways that check abuse and errors that would otherwise hurt many others. And finally, the altered opinions of key community leaders about the local school can lead to community-wide impact.

A general counter-perspective is that key market makers and public opinion setters are the ones already most likely to have information and hence least likely to be affected by required disclosure. This is difficult to assess. We think that while a number of parents in the schools we visited do have informed opinions of the talents of the teachers, we think it much less likely that they know much about the other aspects of the teacher assignment process or that they now function to police the system on behalf of the school's children generally. It is also important to appreciate that to the extent that leaders already know about the teacher assignment process, this should undercut the fear that only elites would benefit from disclosure; indeed, on that analysis, prospects for change, if any, lie in the reactions of non-elites to the disclosure. Our judgment is that elites and non-elites both would know lots more were there disclosures of the type we've discussed. And we think some would act on the new information.

We recognize that one would expect an important impact in terms of behavioral change by parents only if the disclosure significantly affected their perceptions of the benefits and costs and cost to them of becoming more involved in the sorting process. That is, a parent must believe that his or her action can somehow achieve benefits that would not occur without the action. Quite apart from cost, many parents will not get involved no matter how well informed because they feel this "benefit test" is not passed. They believe that school sorting decisions will not improve from their perspective as a result of their input. Moreover, even if parents feel there is some chance that their inovolvement will produce some benefit, in fact they must give up valuable leisure time, or expend scarce personal energy, to try and achieve that benefit. And many parents will decide that the possible gain is not worth that effort. Some do not even have the energy to make a judgment. Plainly, then, many families not involved in the sorting process today will remain uninvolved even after required disclosure. That is, many will continue not to offer a teacher preference, will continue not to resist assignment of their child, and will continue not to object to the existing criteria or process. The question therefore is just how many might become involved and how many of those now involved might change (and improve) their involvement. And it is hard to give a confident answer.

The evidence on consumer response from studies of consumer disclosure laws (reviewed in Chapter 6) cannot support great optimism here. While unit pricing is an example of consumer disclosure which does seem to have positive impact, it is not at all clear that teacher assignment is analogous. Unit pricing, after all, involves providing information about a question that consumers routinely ask themselves when shopping ("Am I better off to buy the larger 'economy' size?") at a point where they must make some decision. To be sure, it is imaginable that the spring teacher conference in elementary school could be transformed into a session in which parents are made to provide input. This might convert their participation into something like the range of conduct that probably occurs in families at a time a child decides which college to attend. But this approach would involve more than mere disclosure; and, it contemplates a substantive posture different from most elementary schools we visited, where, after all, the voicing of parental preference was an optional matter rather than a mandated one.

Similarly, the evidence from the welfare field shows that rather few recipients contest their benefit awards, even though they are formally notified of their right to do so, and even though follow-up studies show that many more than those who object were improperly underpaid or denied benefits altogether.

Despite this pessimistic appraisal, we think that information about specific teachers that would give parents reason to choose among them could cause a substantial increase in parental participation in the preference-giving process. Indeed, we are confident that many school officials would fear that if families really knew about the comparative talents of their schools' teachers, then all too often there would be such an increase in requests for the "good" teachers as to make the school worry about how to turn down parental preferences. In short, there is a perhaps small, but nonetheless real possibility that disclosure could put substantial pressure on schools to figure out how to get rid of the teachers they know are not very competent. Put differently, a school that today can tolerate and satisfy a low level of parental preferences, where many parents don't know what a difference there really is among the teachers, might not long be able to retain its community support if there is a great clamoring to avoid certain duds. Moreover, in such a climate it probably would be very difficult for a school to "solve" the problem by assigning only the children whose parents don't complain to the bad teachers on the theory that are knowledgeably indifferent; some community leaders are likely to complain that the truth is that those parents still don't know or don't care. Hence, there is reason to hope that disclosure will prevent the "dumping" solution. Indeed, it is arguable that today considerable class-related "dumping" occurs, and that in fact the advantages that the educated middle class now have could be eroded to the benefit of others through the right sort of disclosure.

D. The Probable Direct School Response

In this section we will consider the costs of various kinds imposed by information disclosures on school officials. If disclosure costs of one kind or an other lead schools to oppose a disclosure requirement, their resistance can surface in a number of different forms. One form is political resistance to the adoption of the disclosure requirement. Because school employees and school board members are politically well organized, they can almost always prevent a reform lacking active and widespread support of parents.

Even if a disclosure reform is adopted, school employees may resist the implementation of the reform by bureaucratic methods. A school may be required to disclose criteria, for example, but its staff may describe the criteria in such a way that practically any sorting decision it makes can be said to be consistent with the criteria. Even if the state provides additional funds for the schools to publicize their criteria, school officials not interested in this publicity can find ways to comply at a minimal cost and effectively use the remaining funds for other expenses.

These examples illustrate why a low probability of acquiescence is, at a minimum, a severe stumbling block to achieving the potential benefits discussed in the earlier sections. Let us now assess these probabilities for the various levels of disclosure concerning teacher assignments in elementary schools. In general, we think that school leaders would be sympathetic to changes that would increase the consent of the governed, so long as the substantive policies they favor were not threatened. But, we think that most school officials are likely to be far less interested in promoting the control of official abuse or the take-up of the voicing of parental preference.

More specifically, we believe that school officials are likely to be most acquiescent to the disclosure of general information. Our general intuition and the way officials dealt with us suggests that school leaders often view with pride the criteria they use to assign children to classes; many will be happy to inform parents in general terms of them. Hence, we rate the propsects of official acquiescence to calls for this disclosure as "high." School officials would also be likely to acquiesce to some justification of these criteria, especially if they could be made to see how this might improve community confidence in the school. However, school leaders might want enough latitude to offer quite general and therefore, from their perspective, noncontroversial justifications. This would, of course, tend to make the result less informative to parents. Thus, we rate the probability of acquiescence to the desired information as "medium."

We would also expect some school resistance to required disclosure of the process of applying the criteria. Again, while this could increase the consent of the governed, this could also be seen from the school's perspective as creating an unnecessary threat to the procedures already in place. For example, too many questions might be raised in some places about why the principal makes the assignment decisions when the teachers know the children best. Or, once committed in writing, school officials might fear this would be locked into procedures at the cost of the flexibility to deal with situations they perceive as unique. We rate the probability of acquiescence to this disclosure as "medium."

In terms of disclosing the alternative assignments available, we would expect mild resistance. Again, there is something to be gained in terms of community support, and we saw that some schools already solicit parental preferences concerning teacher assignment. Yet school officials so far have done little voluntarily to publicize the alternatives, and as we have said above, it is not at all clear that they would wish to complicate their lives by further encouraging parental choice. We rate this alternative as "medium."

We think that school officials are less likely to acquiesce in the routine disclosure of child-specific information to parents about their child's classification, especially if the requirements included an explanation of the classification. Many would argue that the placement of young children requires the exercise of expert judgment which cannot be neatly described. They would also object to the dollar and time costs of such disclosure. And they would argue that in many cases the child and family are better off not knowing why the placement was made for fear that it would adversely affect the child's learning in the future. Finally, like most bureaucrats, they are not likely to want to encourage outside policing. These and other costs were discussed in Chapter 6. In the absence of considerable external pressure, these alternatives are rated "low." Moreover, disclosure on request only, while somewhat less costly, is also likely to be opposed, absent clever political manipulation of what would then be the school's apparent posture of extreme paternalism and resistance to local accountability.

Similarly, schools are not likely to acquiesce readily in the disclosure of useful information about the attributes of alternative assignments. They would argue, for example, that accurate measures of a teacher's effectiveness do not exist, and that existing measures are misleading and inadequate and could be bad for staff morale. Furthermore, they would continue, such disclosure would create the kind of pressure which increases the difficulty of balancing classes. Absent strong pressures, we think again that potential acquiescence in these disclosures is "low." Table 7-3 displays these conclusions.

Table 7-3

School Acquiescence in Requiring Disclosure about Teacher Assignment in Elementary Schools

Disclosure Options	Probability
1. General Information	
a. Criteria of assignment	H
b. Justification of the criteria	M
c. Process of applying the criteria	M
d. Alternative assignments available	M
2. Child-Specific Information	
a. Classification by the criteria	L
b. Explanation for classification	L
3. Information about attributes of alternative assignments	L

(H=High, M=Medium, L=Low, N=None)

E. Potential Indirect Impact on Substantive Policies

Although it is is tempting to view required disclosure as impacting on a static world in which the direct theoretical costs and benefits are to some degree realized, this is too simplistic. Hence, the fifth and final key question to ask is whether disclosure could have indirect effects in the form of substantive changes in the sorting process. We have already mentioned the main possibilities. Disclosure could cause such an increase in parental requests so as to overload the system and lead school officials to decide no longer to pay attention to any requests at all rather than to devise a method of satisfying some but not other parents. While this scenario might sound a little far-fetched since the posited clamor for choice would make it hard for the school dramatically to reverse itself, it is nonetheless imaginable that in apprehension of the possibility of an avalanche of requests, conservative school officials would, in advance, cut out the role of parental requests. It is crucial to appreciate that were this to occur there would be controversy over whether that outcome would be socially good or bad. Plainly, today's successfully requesting parents would be worse off. But if one were to think of them largely as elites who now gain unfair advantages (we don't) or if one only reluctantly tolerated such requests today (not our view) and were looking for an excuse to get rid of them, then this unintended substantive result of disclosure would be welcomed.

The same point can be made about the possibility that in response to required disclosure schools would change and simplify their criteria and procedures so as to reduce or eliminate discretion in the assignment of students to teachers. As noted earlier, depending upon one's outlook the reduction in the use of professional judgment could be thought socially good or bad.

Finally, disclosure could, of course, lead to political pressures for all sorts of other changes in the teacher assignment process. While we think that, in principle, increased political attention to these issues is good in "process" terms, plainly people would disagree about the social desirability of any substantive outcome -- for example, if schools were to start ability grouping in the fifth grade or if they were to shift to all combination grade classrooms and so on.

Whether any of these, or other, indirect consequences would flow from required disclosure, and if so, at how many and which schools, is terribly difficult to predict, let alone evaluate. Nonetheless, the risk that change can bring about unintended and often undesirable consequences is something not to lose sight of. We think that this uncertainty is a reason why those proposing an active change in policy should bear the burden of persuasion; or put differently, this risk is a reason not to plunge broadly ahead with a policy change that perhaps could be tried out more modestly at the start.

F. Overall Analysis

The next task is to combine the results from the previous steps of the analysis. Table 7-4 displays the summary data. Obviously, our overall assessments depend on the weightings we gave earlier.

We present them not to insist that our weightings are right, but in order to illustrate a method for considering the combined effect of the different factors. Those with different ideas about the relative importance of factors and those with different predictions about consequences can think through this analysis using their own weights.

Table 7-4

Summary Table -- Teacher Assignment in Elementary Schools

(H=High, M=Medium, L=Low, N=None)
(*IC=Informed Choice, CG=Consent of the Governed, TE=Take-up of Entitlements, CA=Control of Official Abuse)
(X=Potential Benefit)

Disclosure Options	Potential Benefit in Terms of the Models*			Extent of Written Disclosure Currently	Probability of School Acquiescence	Net Potential for Achieving New Benefits	Likelihood of Change in Behavior or Opinions of Info Recipien or Indirect Impact on School Policy
	IC/TE	CG	CA				
1. General Information							
a. Criteria of Assignment	X	X	X	N	H	H	?
b. Justification of the criteria		X		N	M	M	?
c. Process of applying the criteria		X	X	L	M	M	?
d. Alternative Assignments Available	X	X		L	M	M	?
2. Child-Specific Information							
a. Classification by the criteria			X	N	L	?	?
b. Explanation for classification			X	N	L	?	?
3. Info about Attributes of Alternative Assignments	X			N	L	?	?

Our judgment is that the required disclosure of general information about school sorting does have the potential to achieve some net social benefits. Requiring disclosure of the school's criteria for assignment is probably the most promising step to take. This is because (a) there is benefit potential in terms of increased consent of the government, better control of official discretion, and greater take-up of choice in a more informed way; (b) schools are likely to acquiesce in the disclosure; and (c) there is virtually no disclosure now. The main uncertainty lies in just how much impact the disclosure will have in terms of changed opinions and behavior of family and schools.

Probably next most promising is the disclosure of alternative available assignments and the process of applying the criteria. Each potentially serves two of our three purposes of disclosure, rather a little is disclosed about them now, and school official resistance to their disclosure is likely to be only moderate. Again, however, while we think there is the decided potential for some new social benefit, just how well the information would actually be used remains uncertain.

Nevertheless, we can readily imagine how a school could disclose with little difficulty and modest dollar cost all three of these levels of general information in one well-designed communication. For example, the school could disclose to families of potential third graders that it has, say, three regular third grade classes (or, say, two regular and one three-four combination). At the same time it could report that as among the three classes, it strives for sex, race and academic ability balance among students, that it seeks to assure that each classroom has its fair share of student leaders and of behavior problems, and that it will accommodate family preference so long as the school's general commitment to "balance" is not upset. Moreover, the school might disclose, say, that its teachers generally teach the same grade year after year unless the teacher seeks a change. Finally, the school could disclose how and by whom "leaders" and "behavior problems" are identified, how ability balancing is achieved, and how family requests are solicited, received and managed. Hence, if, for example, teachers for each grade level meet and pool personal and test score knowledge of their pupils and thereby make assignments to the next grade, this could be revealed together with a concise explanation of the way they actually apply the less than obvious criteria.

When it comes to disclosing justifications of the criteria, the potential for net social benefit, we think, is somewhat reduced. Not only is this sort of disclosure likely to serve only the purpose of increasing the consent of the governed, but also there is likely to be somewhat greater school resistance to meaningful disclosure here than with respect to the disclosure of other general information about elementary school teacher assignment. Were disclosure of justifications required, however, we think a school could easily include in the communication described above an explanation of, say, why it believes in ability mixing rather than ability grouping, why it allows some family choice and so on.

We think it important to note that this sort of disclosure -- of these various levels of general information about school sorting -- is broadly analogous to the disclosure now required of governmental agencies engaged in rulemaking pursuant to the Administrative Procedure Act. Hence, it is hardly foreign to governmental bodies. (Indeed, the APA also requires the agency to advertise for comments on proposed rules and to publish both criticisms that were not accepted and explanations thereof. We put these elements aside for now.)

Turning next to the disclosure of child-specific information and information about the attributes of alternative assignments, making a net appraisal is more difficult. The former potentially increases substantially the effective control of official abuse or error, and the latter potentially increases substantially the expression of informed parental preference. Yet just how much this information will actually serve these purposes (because of potential non-use by recipients) is questionable, notwithstanding the virtual lack of formal disclosure of such information today. Moreover, for both dollar cost and other cost reasons (such as school reputation and teacher morale), school officials are likely to resist most the requirement that they disclose this detailed information.

While these factors might dampen one's enthusiasm for an "outreach" approach to this information, one can still find promise in a publicized "access" approach. As noted earlier, the deterrence gains with respect to the control of official discretion might be importantly achieved merely by making clear that those parents who ask for explanations about how and why their children were sorted will be given such explanations. Note too that, under the Public Records Acts of many states, much of what information exists in writing about the detailed alternative assignments is currently available to those who ask for it. Of course, some desired things will not be in writing or even currently known to school officials, and some desired details about individual teachers will be protected under those freedom of information acts. Indeed, anyone who favors disclosure about individual teachers has to decide where to draw the line. In colleges it is common for student evaluations of teachers to be publicized -- sometimes by the institution itself. In elementary school, however, student evaluations would be more difficult to obtain and less reliable. Nonetheless, parental evaluations and staff evaluations would be helpful. Yet, there is a competing tradition of keeping confidential the performance reviews conducted by, say, supervisors. In the same way, while many parents would want to know how much various groups of children had learned from a specific teacher, there would, of course, be privacy reasons to limit how much was disclosed about individual children.

In any case, an important difference from the Public Records laws, we would think, is that even an "access" approach to detailed information would carry at least this amount of outreach: The school would explain (perhaps at part of the general communication described above) that it stands ready to tell parents details about both the decisions made about their child and the available teachers if only the parents would ask for it. Hence, under this approach a parent would be prompted to find out if his or her child had been identified as one of the "leaders" or "behavior problems", and if so, how this determination was made; so too, on request, the school would explain how the child's sex, race and ability (and how that was determined) influenced his or her assignment. In short, in terms of child-specific information, were the family to ask it would be provided with information broadly analogous to that which typically is supposed to be given to people when government administrative agencies hold "due process" hearings on individual cases.

In sum, our tentative judgment is to favor widespread experimentation with outreach disclosure of general information about elementary school teacher assignment and cautious experimentation with publicizing access rights to detailed information about such sorting decisions. But since elementary school teachers assignment is but one of the important steps in the mainstream sorting process, before drawing any firm conclusions it is necessary to analyze the other parts of the process.

III. Other School Sorting Decisions

We do not propose to repeat here the detailed analysis illustrated above. Rather, we want primarily to highlight instances in which the possibility of achieving net benefits seems to us rather different for other steps in the process than for elementary school teacher assignment.

A. Assignment to Classes in Junior and Senior High School

As we saw, a fundamental change that occurs starting in junior high school is that for the first time the child is given choice about classes. The student's choice set grows from one of relatively few elective offerings in junior high to considerable course possibilities in high school. Another important change is in the roles of school officials. After elementary school, ability mixing begins to be replaced by ability grouping and the use of prerequisites which also serve de facto to sort by ability. School officials begin to decide less for the individual child, substituting counselling and enforcing the bureaucratic rules of the game (for example, testing and whether classes are filled on a "first come, first serve" basis or "seniors have preference").

From the perspective of the taking-up of and making informed choice about entitlements, at the junior high school level the potential benefits are reasonably high from the disclosure of general information about the sorting criteria, the sorting alternatives and the sorting process. And the potential benefits are probably even greater at the high school level, although in some respects the meaningfulness of the concept of "assignment" criteria recedes as choice dominates. At the same time, the potential benefits in terms of informed choice from the disclosure of specific attributes about alternatives are probably greatest in the higher grades.

On the other hand, there is probably less potential in the upper schools, as compared with elementary school, from the prospective of the consent of the governed, unless it turns out in a given community, say, that ability grouping is especially controversial, in which case disclosure of justifications for the school's practice could be more valuable.

So far as control of discretion is concerned, at junior high there is, on the one hand, relatively less opportunity for abuse or error because of the widespread use of random computerized assignment. Yet, there is some potential for gain in the control of favoritism in the elective selection process through the disclosure of general information about the procedures and criteria. Perhaps most important, however, is the risk of error or abuse in placements in those few subjects that are ability-grouped, especially since a decision about math and English tracking in the seventh grade can have a decisive influence on the child's entire secondary education program of study and, in turn, on his future career. Moreover, even if chance of error or abuse here is small, the potential consequences are probably far more damaging than those ordinarily arising from similar errors or abuses in elementary school. With disclosure, however, parents will be better positioned to object to the propriety of their child, say, being put in a "slow" class, or to the failure, say, of the school to place the child in a remedial program. Hence, we rate child specific information as having rather great importance for purposes of discretion control. Indeed, under this model math and English ability grouping decisions made for seventh graders present perhaps the strongest case for outreach disclosure to all parents. For this very reason, the potential for gain at the high school level, from the perspective of control of discretion, is probably less; but because of abuse and errors potential in both arena scheduling and ability testing, the possibility of gain does, as an elementary school, remain significant.

Table 7-5 illustrates where we judge the benefit potential from information in junior and senior high to be greater than in elementary school with respect to assignment to teachers.

Table 7-5

Teacher Assignment in Junior and Senior High Schools v. Elementary Schools

Disclosure Options	Where Potential Benefit in Terms of the Models Differs From E. S.		
	IC/TE	CG	CA
1. General Information			
a. Criteria of assignment	+		
b. Justification of the criteria		-(?)	
c. Process of applying the criteria	+		
d. Alternative assignments available	+		
2. Child-Specific Information			
a. Classification by the criteria			+ (Jr. High)
b. Explanation for classification			+ (Jr. High)
3. Information about attributes of alternative assignments	+		

(*IC=Informed Choice, CG=Consent of the Governed, TE=Take-up of Entitlements, CA=Control of Official Abuse)

(+ means more; - means less)

Having discussed potential benefits, let us turn to the extent of written disclosure now provided. Junior high schools and high schools currently provide relatively little written disclosure about assignment to classes. Still, students, and through them parents, are generally provided with a list of the courses and sometimes a short court description plus the names of the teachers. And, the arena scheduling system is presumably explained to students, if not to parents. As before, it is difficult to know what is routinely conveyed orally by counsellors to students and by teachers to parents when the child is ready to move on to junior high school. So too, the reliability and extent of the student grapevine is difficult to assess. Hence, whatever the potential benefits in the upper grades from disclosure to parents as a whole (apart from those arising from general information about assignment alternatives and the assignment process), they are probably only little realized today.

Turning to school acquiescence in required disclosure, and to possible substantive policy changes that might be brought about from disclosure, we first surmise that schools might less readily agree to the required disclosure and justification of general criteria of assignment in junior high and high school than in elementary school, both because the whole system is more complicated and thus more complicated to explain and because ability grouping and tracking is a sensitive issue.

Nonetheless we expect a school's probability of acquiescence to be "medium." By contrast, we think schools will be less resistant than in elmentary schools to disclosing the process of assignment; especially under random assignment and assignment by student choice, there is less exercise of administrative judgment that is difficult to explain (or informally to justify) to others. We rate acquiescence to this disclosure as "medium" as well.

We think that schools would fairly readily acquiesce to required disclosure of child-specific information in response to parental requests. Indeed, to the extent that simple rules of thumb-like grades and test scores together with random assignment and choice determined assignments, the school officials might well acquiesce in outreach disclosure to all parents complete with explanations. For example, "John's English grades and test scores put him in the bottom 40 of 400 students which is why he was placed in the slower track." However, to the extent that non-quantitative factors are used by the school, school officials could be expected to resist, and if forced to disclose, they might go so far as to alter their criteria so as to rely on harder information alone. We think there is little chance, however, that ability grouping itself would be abandoned. We rate acquiescence here as "medium." As for program attributes, however, beyond the course names, teacher names and brief course descriptions now provided in many places, we predict that for both cost, morale and other reasons school officials would strongly resist evaluative disclosure, including possibly quite valuable information about the career and higher education patterns of those coming out of a high school's particular courses and tracks.

As in elementary schools, the hardest thing to predict with confidence is how parents might make use of required disclosure and whether there might be unintended, indirect consequences on school policies arising from disclosure (for example, might arena scheduling be abandoned?) Of particular concern is whether the potential to improve the accuracy of seventh grade ability grouping could be realized.

Table 7-6 summarizes our analysis of class assignment in junior and senior high school.

Table 7-6

Summary Table--Assignment in Junior High and High Schools

(H=High, M=Medium, L=Low, N=None)

(*IC=Informed Choice, CG=Consent of the Governed, TE=Take-up of Entitlements, CA=Control of Official Abuse)

Disclosure Options	Potential Benefit in Terms of the Models*				Extent of Written Disclosure Currently	Probability of School Acquiescence	Net Potential for Achieving New Benefits	Likelihood of Change in Behavior of Info Recipient of Indirect Impact on School Policy
	IC/TE	CG	TE	CA				
. General Information								
a. Criteria of Assignment	X	X		X	N	M	M	?
b. Justification of the criteria		?			N	M	L	?
c. Process of applying the criteria	X	X		X	L	M	M	?
d. Alternative Assignments Available	X	X			M	H	M	?
. Child-Specific Information								
a. Classification by the criteria				X	L	H	M	?
b. Explanation for classification				X	N	M	?	?
. Attributes of Alternative Assignments	X				L	L	?	?

Aggregating the analysis, we think that the disclosure of general information about the criteria, the process of decision and available alternatives once again have real potential to yield new benefits. (Note the "medium" rating for the required disclosure of alternatives despite the very high potential benefits and relatively low cost. This is due primarily to the voluntary disclosure that already occurs.) As for the disclosure of other levels of information, the picture is once more cloudy. While we have some optimism about official acquiescence to disclosing child-specific conclusions, we wonder just how effectively employed those explanations would be; contrarily, we doubt that much evaluative information about the attributes of alternatives could be easily obtained, even though if it were this could be very valuable in terms of social gain.

B. School Assignment and Transfer; Changes After the Year Begins; Promotion and Retention

In our field research we also looked at the processes of teacher changes after the school year begins, promotions and retentions, and school assignments and transfers. We will comment here only briefly on the possible impacts of disclosure requirements with respect to each.

A change of teachers after the school year begins occurs only rarely today. Moreover, school officials clearly do not wish to encourage more students to try to change because of the difficulties they have in maintaining class size and, in lower grades, class balance. This makes the likely success of any required disclosure initiative politically questionable. This especially true with respect to efforts to get schools to disclose general information about the availability of this type of transfer to all parents. On the other hand, once someone has requested a transfer there is likely to be less school resistance to providing child-specific information, and the disclosure of that information does have some chance of achieving benefits in terms of more informed choice and more control over official discretion.

Parents may have valid instincts for making a request, while school officials have incentives not to grant them due to the bureaucratic costs involved. A requirement of a written explanation for a denial increases the school's cost of denial. This can force it to face costs either way and may make it more attentive to the merits. Similarly, one might wish to require an affirmative school explanation of teacher-initiated changes once the year begins in order to protect students against arbitrary reassignments. But because of doubts about the size of the potential benefits from these disclosures, we would not rate the expected net social benefits as high.

Retentions in public schools are rather rare. Almost all of them are concentrated, according to our findings, in kindergarten and first grade. In all the districts we visited parents can refuse retention of their child and are always involved in the decision. We do not know, however, the extent to which parents are aware of their veto power.

No one really knows in advance whether retention will help or harm a child. Existing parental involvement and the infrequency of the event minimize any official abuse that can go on in this area. Nonetheless, the informed take-up of the entitlement of a parental veto is one potential benefit which disclosure might achieve. And although consent of the governed is not strongly affected by rare events like this, still, affected parents might feel better about the school system generally to be told clearly that they get to decide. On the cost side, schools would probably acquiesce to required disclosure of the parents' veto power. School policy on promotion and retention is unlikely to change overall, we suspect; and probably, in the end, few more parents would veto a retention than do so today. Thus, we see little cost and some benefit to a disclosure requirement here.

Initial school assignment is done geographically and parents find out about it through informal channels or by inquiring at the school. We did not become aware in our research of any problems that parents have relevant to disclosure of the basic assignment rules. Matters such as how geographic lines are drawn, while perhaps important, were beyond the scope of our inquiry. (Probably the biggest problem involving disclosure with respect to initial assignment goes the other way: many schools would probably wish better information in order to be assured that they are given proper addresses by parents who come to register their child).

Transfers between schools once initial assignments have been made is a more complicated matter to assess. Intra-district transfers usually seem to involve less than 5% of a district's students, although a few districts we visited had more. Inter-district transfers are substantially less frequent. Where a district has open-enrollment, there typically is extensive disclosure concerning selection procedures, and sometimes these are disclosures about different educational programs offered by the schools. In some districts, detailed information about policies governing ad hoc parent-requested transfers is available. Hence, surely all districts could be made to come up to the disclosure level now provided in some places.

However, some districts that do not now publicize their procedures fear that parents with "hidden agendas" will use the transfer route to reduce racial balance in the district. Indeed, the only two districts in our sample which denied a significant number of parent requests were racially heterogeneous. In short, the variation in district disclosure policies which we saw seems partly to be motivated by an understandable concern. This, however, is a troubling issue with implications far broader than disclosure policy; after all, families are now free to escape school integration by moving. In any event, at least in relatively homogeneous districts, it may well be possible to achieve net social benefits by requiring disclosure of the criteria for and the process of school transfer.

Once families get into the transfer system, there is already today, in general, a fair amount of individual communication of reasons for denials; and as parents usually seem want more to get their child away from something rather than to get him or her into something, information about attributes is seemingly of less potential benefit. This is especially so if educational quality remains an impermissible criteria for transfer (although publicizing the transfer option could lead to a change in this policy). In open enrollment settings, of course, detailed information about alternatives is important to informed choice; once again we predict the likely unwillingness of the district to acquiesce readily in the publication of evaluative information about its schools.

IV. Conclusion

Although we will save our overall conclusions and recommendations for a final chapter, we will offer here a few general comments arising from the policy analysis just carried out. Given our predictions and our values, we see, in a variety of ways, real potential for net social gain from requiring certain disclosures by schools. We must cautiously remind, however, that those with different values or predictions might conclude otherwise. Moreover, we recognize that many of our judgments are rather speculative. We also appreciate that if too much information is disclosed, especially in one communication, this could backfire with many parents ignoring the message altogether. Nonetheless, while we don't want to argue that disclosure alone is likely to bring about a radical improvement in public education, we will move on from our policy analysis to our legal analysis with guarded optimism. After all, most would agree that any prospect for even moderate improvement in our public schools is definitely worth pursuing.

As noted in this chapter, sometimes despite apparent potential for social gain, likely school official resistance made us pessimistic about the practicality of prompt or easy political change. But it is possible that such change could be ordered and enforced by the courts; we consider that next.

CHAPTER 8

LEGAL ANALYSIS OF SCHOOL SORTING AND DISCLOSURE: CONSTITUTIONAL CONSIDERATIONS

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CHAPTER 8

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These days, if someone makes even a plausible case for one kind of social reform or another, there is often a lawyer who steps in to argue that the Constitution demands such reform. This is hardly suprising; once courts showed themselves willing to draw on the Constitution to order far reaching changes in domestic policy, they created demand for more of their services. And once the courts were seen to have succeeded in actually changing some large scale American institutions, like our public school systems, it was like a genie escaped from a lamp. The potentialities are breathtaking; one persuasive lawyer and one daring judge could cut through the political thicket and accomplish in a short time a "pressing" reform that the process of majoritarian politics might have suggested was light years away.

Recently, a number of judges, lawyers and scholars, who had previously been sympathetic to this sort of social change, have been reassessing both the wisdom and effectiveness of judicial activism. And, it seems, judges who were never very sympathetic to it are both speaking out more and obtaining more power. As with other genies, however, this one promises to be very difficult to get even part way back in to the bottle.

We have no doubt, therefore, that if a reform movement promoting disclosure about school sorting decisions were launched, eventually a law suit would be filed that was designed to try to achieve the goal. We put aside here the use of such litigation for strategic political purposes, even though this motivation for "public interest" litigation cannot be dismissed. Rather, we propose to give attention to both the main theoretical avenues such lawsuits are likely to follow, and their prospects for success.

The most obvious legal strategy would be to claim that the federal constitutional guarantee of "procedural due process" commands disclosure with respect to school sorting, and we begin our analysis with that theory.

I. Is there a constitutional due process right to some disclosure about school sorting?

A. Procedural due process -- its objectives

The Fourteenth Amendment to our national Constitution guarantees people due process of law in their encounters with state (and local) government. Broadly speaking, the U.S. Supreme Court has interpreted this provision to insist on certain kinds of fair dealings when officials make decisions about the important interests of individuals. The epitome of due process, as the Court has seen it, is the set of procedural protections that surround those accused of crime -- from limitations on arrest, interrogation, and the obtaining of evidence, to all the conditions that go into making for a "fair trial." These procedures are intended to assure that law enforcement officials deal fairly and decently with both the populace at large and those in their custody and that only the guilty are convicted. The concept of due process of law has by no means been restricted to criminal procedings, however. Many civil and administrative matters have been subjected to its commands by the courts, albeit that the specifics of what due process requires are tailored to the circumstances.

Thus, generalizing beyond the criminal context, we can point to two broad purposes that courts identify as meant to be served by the due process guarantee.

The first may be termed accurate decision-making -- giving people what they deserve under the law, whether benefits or detriments. This purpose is especially emphasized by the U.S.

Supreme Court of late. While the wish to avoid inadvertent or negligent mistakes by government is surely relevant here, perhaps paramount is the desire both to avoid arbitrariness and to curb the abuse of offical discretion. The central manifestation of arbitrariness or abuse of discretion is the failure to treat like cases alike and thus to fail to give all what the deserve. It has been widely thought, however, that you can promote the goal of accuracy and deter abuse if you impose the fair trial or "hearing" model on decision-making. We note that the accurate decision-making is broadly congruent with the social purpose of information we have identified and set out in our Model 3.

A second general objective of due process relates to the dignity of those subject to government decisions. The idea here is that our relationships with public officials are supposed to be marked by respect. It is argued that it makes people feel better to be so treated, whatever the outcome of the issue to be decided; and the procedures required under the rubric of due process are meant to create that respect. The crucial elements here are thought to be the communication of official reasons for public actions and public participation in state decision-making. By contrast, the absence of due process is equated with widespread fear of government and is thought to risk a drift toward totalitarianism that would jeopardize other important liberties that Americans enjoy. We note here the rough parallel to our Model 4 in which information is seen to serve the value of respect between critizen and government. We also note that this purpose of due process has been down played by U.S. Supreme Court of late. It has, however, been embraced by the California Supreme Court and has been emphasized by many commentators.

In contrast to these two parallels, it is worth remarking at the outset that the other values of disclosure we have explored -- to make informed choice (our Model 1) or to learn of opportunities for take-up (our Model 2) -- are not traditionally emphasized in litigation rooted in the Constitution. This distinction will be further pursued in due course.

B. The U.S. Supreme Court's two-step approach to procedural due process.

Deciding that due process applies means that, as a matter of constitutional law, certain procedures are imposed on governmental decision-making. These procedures are often in addition to what are now provided by government so that the outcome of the court's decision is to add procedural protections. Sometimes, however, a court will conclude that even if due process applies (or were to apply), what is now done suffices. After all, legislative and administrative bodies are also sensitive to due process values.

In dealing with cases in which procedural due process claims are asserted, the Supreme Court has adopted a two-step form of analysis. Before any process is constitutionally due, the claimant's case must pass a first or threshhold test. That is, for some government decisions due process is simply inapplicable. Only if the threshhold is surmounted does the Court turn to the second step to decide what process is due. We take up the steps in order.

Step one: Is the claimant being "deprived" of "liberty or property"? A dozen years ago in Goldberg v. Kelly, the Supreme Court discredited the doctrine of governmental "benefit" or "privilege" in the non-criminal area, under which the state was largely free from judicial control, and accepted instead the notion of an "entitlement," the holders of which had constitutional rights against the state. Drawing importantly on Yale's Charles Reich's "new property" idea, Goldberg held that once you were receiving welfare, the state couldn't arbitrarly cut off your "entitlement." You had a right to due process in the form of a fair hearing. Such a hearing would presumably determine whether you really were entitled under the law to stay on welfare; at the same time the existence of the hearing was meant both to control government administrators and to give dignity to the recipient.

Since it is clear that you have no independent constitutional right to welfare, some have wondered from the outset why government couldn't create this "property" right or "entitlement" to welfare on whatever terms, or with whatever contours, it wanted. That is, just because eligibility details were spelled out by the law, why couldn't the legislature make the application of those rules a matter of unreviewable judgment by some low level bureaucrat? But this view of separation of powers, although perhaps gaining ground, has not prevailed.

To what, then, does due process attach? For a while it looked as though the Court would identify what was subject to due process guarantees by deciding which government decisions were both important and somehow either touching on, close to, or vaguely arising from basic constitutional values. That is, the courts might define entitlements by reference to their sense of what is important. This view is now much eroded. In recent years, the consistent formulation by the Court is that due process applies only when you have an identifiable and pre-existing property right or liberty interest in jeopardy. And the Court looks primarily to state law to find such rights and interests (assuming no substantive constitutional right is at stake).

Goldberg, in short, is now clearly seen to rest on the fact that people meeting certain standards had an underlying statutory right to welfare, and not on the Court's judgment, say, that a minimum income is crucial if one is to enjoy either a basic material or a basic political existence. In the same vein, Goss v. Lopez decided in the mid-1970s, which dealt with school suspensions, is now seen to rest primarily on the fact that the state had created a statutory right to go to school (and hence couldn't arbitrarily deny schooling to you, even if for only a short time) and not on the grounds that schooling itself is constitutionally important, or that schooling is crucially tied to free speech and political action, etc. or that the wrongful denial of schooling invades a constitutionally-based dignity right. (Some think that Goss also still stands firmly for the view that students have an independent liberty right to associations and future employment that is compromised by wrongful suspension.)

Despite the apparent simplicity of the formulation, lower court decisions applying the "liberty or property" test are not easy to reconcile, and the U.S. Supreme Court itself remains badly divided in many cases. The problem is that just what does really amount to a deprivation of the required property right or liberty interest that gets you past the threshhold step is still ambiguous. The Court has talked a lot about "justifiable" expectations on the one hand and those expectancies that are "too ephemeral" on the other without making clear where the line is drawn. Shortly we will discuss how school sorting decisions might fare at the first step.

Step two: What process is due? Surmounting the first step only tells us that due process applies. It does not say what process is required. Although due process in regular prosecutions for criminal conduct that can lead to incarceration plainly requires elaborate procedures that are designed to assure that the innocent won't be convicted, the Court has made clear, putting it bluntly, that where less is at stake, less process is due.

The "what process" decision nowadays is formally made by the Court through what passes for a rather candid application of a standard cost-benefit formula. As articulated in Matthews v. Eldridge in 1976 and followed since, the task is to balance the burden of extra process on government (typically its cost) against the extra benefit of such process to claimants. This extra benefit is to be measured by considering (mainly) both the prospects that additional procedures will increase the accuracy of determinations and the importance of the issue being decided. In short, government is apparently supposed to keep on investing in additional procedural protections so long as their marginal cost is outweighed by the marginal benefit achieved--measured in terms of extra accuracy, given the worth of what claimants will save thereby.

In practice, litigation has fought over such things as whether courts must decide or whether agency decisions are good enough; whether full scale reviews must occur before a right is provisionally lost or whether subsequent review is enough; whether counsel must be provided or whether a right to have counsel is enough; whether cross examination of witnesses is required or whether being able to give your side of the story

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is enough; whether a given administrative decision-maker is neutral enough or whether someone more removed from the scene must make the deprivation decision and so on.

As with the threshhold step, despite the superficial simplicity of the second step formula, lower court decisions seem in conflict and the Supreme Court again is often badly divided. Part of the problem stems from the fact that the importance to the claimant of the wrongful deprivation of his interests is often plainly a matter of values and not something to be ascertained scientifically. Part of the problem is that both cost estimates (and other burdens of government) and the prospects for increased accuracy are typically speculative. Analysis is further complicated by the fact that sometimes the claimant is suing for damages for a past denial and othertimes he is trying to get new procedures for the future. On the whole, the federal courts seem more wary of the former; they certainly don't want to be converted into forums where every tort becomes a constitutional law violation. Despite these uncertainities, it can at least be said that the traditional approach, seen in the Goldberg - Matthews line of cases, focuses on individualization; that is, due process seems to require at least some significant individual decision-making. This will be important for our later discussion in which we look at what process might be due in the school sorting context, if the threshhold step is met -- and to the application of that first step we now turn.

C. Does school sorting implicate the required liberty or property interests?

1. Supreme Court precedent.

Since Goldberg, the Court has decided three important procedural due process cases in the schooling area. In Goss, the Court held that wrongful school suspensions amounted to the deprivation of interests that satisfied the threshhold test so that due process applied. (Looking ahead, in the case of short term suspensions, due process was said to require rather modest procedures: the right to be informed of charges and to be able to talk with the suspending official who must hear the student's side of the story prior to suspension -- and then only if there is not an emergency situation.)

In Ingraham v. Wright, decided in 1977, the Court held that corporal punishment in public schools also invoked due process quarantees. (Once again, looking ahead, the required process was not extensive. So long as the student had the subsequent right under state law to pursue an ordinary tort suit for damages against the offending school official, no prior-to-punishment procedures were thought to be constitutionally required.)

In *Board of Curators v. Horowitz*, decided in 1978, where the claimant was academically dismissed from graduate school, the majority first suggested that perhaps there was no required property interest at all at stake since the plaintiff had no "property right" under state law to her seat in the medical school. It then cast doubt on whether she had a required liberty interest at stake, suggesting that her claims about the stigma that might attach to her dismissal and thus impair her future opportunities would be constitutionally insubstantial especially when no publicity was given to the reasons for her dismissal. Despite these gratuitous whacks, the majority went on to make it clear that it need not actually decide the liberty-property issue in the case, since whatever the Constitution might require, the complaintant's medical school already provided it -- in the form of a reasonably thorough internal administrative review prior to dismissal.

For our purposes at the moment, the important thing is to consider what these three cases might tell us about how one is to decide in the school context whether any process at all is constitutionally required. Although the Court at times seems to have suggested that pupils have protected property and/or liberty rights in the educational process or in education per se, it has not yet adopted a formulation to the effect that *any important decision with respect to education* generates some due process entitlement. Rather, the Court has been able to focus on *the specific aspect of education that is at stake* and to ask whether *its deprivation* amounts to something with respect to which the pupil can claim a property or liberty right. Perhaps this approach can be explained simply by the nature of the cases that have come to it. In Goss, one can readily point to a state law statutory "right" of young people regularly to attend public school. Since wrongful suspensions (outright exclusions) can readily be seen to deprive pupils of that "right," that has seemed to end the need for further analysis. Of course, even here there is trouble lurking; does suspension from one class for one hour also invoke due process? If one mechanically applies the statutory right-to-attend idea, it apparently would. The Court hasn't had to answer that one yet. It did emphasize in Goss, however, that serious harm could well flow from a ten day suspension, thereby suggesting that simple-minded reliance on the right-to-schooling law might be misplaced.

In Ingraham too the Court was quickly to able to focus on one's right to bodily integrity as the thing being violated by wrongful corporal punishment. Again, this seemed to end analysis--without the need even to connect this right to an important school deprivation.*

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*It is worth noting just where this right to bodily integrity comes from, however. It was seen to arise from the state's common law of torts, and perhaps its criminal law, that presumably include the possibility of penalties for those who violate this bodily integrity right of pupils. As the dissent pointed out, the reality of such a state law right was open to serious question in Ingraham.

This narrowly focused approach readily explains the difficulty facing the Court in Horowitz where Justice Rhenquist suggested that it was hard to see where one would look in order to find a statutory or common state law right to remain in a state college or graduate school. We think that the Court could well have drawn on its precedent in other areas to find that one admitted to a state university does have, through widely understood past administrative practices, a "justifiable expectation" to remain in school which would thereby give the student the property right required for due process purposes. In any case, since the Court made clear that it did not have to reach the question, it is hard to know what to make of Justice Rhenquist's conservatively phrased dictum. Moreover, it is important to recognize that Horowitz was seen by the court as plainly involving an academic rather than a disciplinary dismissal -- a distinction which Rhenquist emphasized strongly. Also notable, we think, are the facts that, unlike Goss and Ingraham, Horowitz involved higher education and had no racial overtones.

What are we to make of these decisions for our purposes? If they mean that due process will apply to the sorting process only if one can point to a firmly anchored state statutory, regulatory or common law right covering the details of sorting, then those who would seek to constitutionalize the regular sorting process are likely to be out of luck. Teacher assignment and transfer, school assignment and transfer, course assignment, grade promotion and the like are not likely to be matters which the state constitution, the state education code or regulations, or state court common law cases have said anything very useful about. Moreover, it will probably not be easy, as it was in Ingraham, to resort to the clever ploy of claiming that wrongful sorting decisions can give rise to state created tort or other penalties. After all, education malpractice suits have been largely unsuccessful.* Still, perhaps creative lawyering could carry the day with this approach; surely intentional or grossly negligent missorting decisions could, under state law, cost teachers their jobs, and under the right circumstances could give rise to state court declaratory relief.** Might not this be enough of a state law right? Who can say?

If the answer is "no" then when one considers the potential importance of the educational decisions involved, there is something a bit unsettling about an approach that would seem sharply to distinguish for due process purposes between short term school suspensions and school corporal punishment on the one hand and school sorting decisions on the other. Let us explain why.

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*An irony here is that, while from a policy view point information disclosure can be seen as an alternative accountability strategy to that envisioned by malpractice suits, the disclosure strategy would apparently be more readily embraced by the judiciary if malpractice suits were already accepted.

**Remedies for mere negligent or mistakes of judgment, of course, are another matter.

The thing to be avoided in Goss was a mistaken or unjustified 10 day suspension, in Ingraham the wrongful (or excessive) use of corporal punishment, and in Horowitz the improper academic dismissal from school. We suspect that many people would conclude that a wrongful permanent dismissal from medical school might well amount to the most severe deprivation. Still, as those who have studied Goss's impact have learned, in some instances the purported short term suspension directly led to the pupil's failure to graduate from high school; and it is easy to see how the improper use of corporal punishment can leave the student scarred for life in more ways than one. Therefore, we are prepared to assume that that the matters at stake in all three of these U.S. Supreme Court cases involved potentially enormous consequences.

What, by comparison, can be said about sorting decisions we have considered? It seems equally plain to us that, in some cases at least, a very great deal turns on erroneous sorting decisions. If, for example, because of discretionary abuse, irrational or uninformed professional decision-making, or systematic bias in school assignment policies, a pupil gets the wrong teacher, winds up in the wrong school or grade level, or in the wrong course of study, the consequences can be very bad indeed. Surely nearly everyone feels this is so, not withstanding the inability of broad social science inquiries convincingly to show the impact on pupils of various resource configurations.

One reason for such failure probably stems from the equally widely believed notion that, for many pupils, such sorting mistakes will turn out to have either trivial or no negative consequences. Moreover, vagaries in the distribution of teacher talent and of student ability, the unpredictability of human interactions, and the like are such that, overall, these latter impacts on school sorting are probably far more important than are sorting errors. Put differently, the consequences of these other factors probably swamp in overall importance the gains that could be achieved through making the sorting process extremely "accurate."

But these same points, of course, can be made about the deprivations the Court has considered. For some pupils a mistaken, mild spanking by a boys dean will be quickly forgotten and of little moment; for some pupils five days out of school pursuant to a wrongful suspension will, by itself, cause no important marginal loss in learning, self-esteem, motivation, the future opportunities and the like. It is only for some pupils that people think that such errors can have enormous consequences.

Moreover, we think that the academic dismissals, disciplinary suspensions and pupil strikings that have been considered by the Court are most sensibly viewed as part of the broad sorting process, especially when one thinks about their counterparts in the lower grades. After all, Horowitz involved post-secondary education, Goss mainly high school, and Ingraham junior high. In elementary schools, as we have seen, there aren't academic dismissals. One repeats a grade or a course, doesn't graduate with one's peers, is transferred to a less demanding program or to another school and so on. By the same token, "trouble-makers" in the second grade aren't suspended; but next year (if they are promoted) they are divided up in hopes of both constraining the harm they do, and helping them to behave better.

In sum, from a policy view, we think that in many instances an individual pupil's interest in the accuracy of routine school sorting decisions can well be equal to or greater than the interests of those complaining about the treatments at issue in the three Supreme Court cases. Hence, from the perspective of the "importance" of school decisions, once short term suspensions and corporal punishment have been identified as subject to due process, it is difficult to draw a line to exclude at least some key aspects of school sorting.

Of course, as we have seen, the Court has not yet found it necessary to hold that the importance of a school decision by itself is not enough to invoke due process; on the other hand, neither has it had to hold that in the school area the property right or liberty interest on which due process hinges must be found in a narrowly conceived source of state law. Perhaps "justifiable expectations" with respect to school sorting would amount the required to property or liberty rights after all.

Rather than continue to speculate, we decided to explore whether one could better assess this prospect by considering what lower courts have done with *Goss-Ingraham-Horwitz* in other school settings.

2. Educational due process in the lower courts.

Lower federal courts have taken mixed approaches when they have considered issues that are more closely analogous to whether school sorting decisions deprive students of the requisite property or liberty interests. On the one hand, an important series of federal district court decisions has concluded that procedural due process does apply to the assignment of children to classes for the mentally or physically disabled. Since some of these cases involved children who had been completly excluded by school systems, it is easy to see how, following the *Goss* idea (even if decided before *Goss*), the court would conclude that a total deprivation of public schooling is subject to due process protection.

However, many of these handicapped children cases were not restricted to excluded children. Some also clearly covered the *transfer* *into* special education classes of children who previously were in regular classrooms. In short, these cases found due process applicatable to *within* school sorting. For example in the leading and early case of *Mills v. Board of Education of District of Columbia*, 348 F. Supp. 866, 875 (D.C.

1972), the court said that "due process of law requires a hearing prior to exclusion, termination or classification into a special program." The problem with this precedent and similar decisions we will discuss is that in none of the cases is it made clear just _why_ the assignment of a child to a special education program threatens a protected liberty or property interest under the 14th Amendment. _Mills_, for example, relies primarily on an earlier lower court case having to do with a disciplinary expulsion of a student said to have possession of obscene material.

Cuyahoga Cty., Assn. for Retarded Children & Adults v. Essex, 411 F. Supp. 46 (N.D. Oh. 1976), also held that students must be afforded due process before being placed in special education classes. There the court cites _Goss_ and says that "_defendants do not deny_ that children within a compulsory public school system must be accorded due process in matters _materially_ affecting their education." _Supra_ at 57. (emphasis added) In _Hairston v. Drosick_, 423 F. Supp. 180 (S.D.W.Va. 1976) the court, citing no cases, simply asserted that the exclusion of a minimally handicapped child, without prior notice or a hearing, from a regular public school classroom situation violated the procedural due process protections of the 14th Amendment. And a federal district court in New York held that placement of school children out of the "mainstream" requires procedural due process protection, _Lora v. Board of Education of N.Y.C._ 456 F. Supp. 1211, 1278 (E.D.N.Y. 1978), partially vacated on other grounds 623 F.2d 248 (2nd Cir.

1980). This case involved the assignment to Special Day Schools of children whose severe emotional problems were seen to cause them to "act out" and display unacceptly aggressive behavior in regular schoolrooms. The court cites Mills, Hairston, a Pennsylvania case approving a consent decree (P.A.R.C. v. Pennsylvania, 343 F. Supp 279 (E.D.Pa. 1972), and lots of academic literature in support of its due process holding.

In short, while the precedent in cases involving "handicapped" children ("special education") is impressively consistent, it rationale is not altogether self-evident.

Moreover, there is a line of lower federal court decisions involving sports participation that has rejected the applicability of due process to internal school decisions. It is important to appreciate that the plaintiffs in these cases involving student challenges to rules governing participation in interscholastic athletics often had substantive rather than procedural objections to the rules. Nonetheless, school or atheltic association decisions under such rules have repeatedly been held not subject to due process protections. See especially Hamilton v. Tennessee Secondary School Athletic Ass'n, 552 F. 2d 681 (6th Cir. 1976). See also Albach v. Odle, 531 F. 2d 983 (10th Cir. 1976), Mitchell v. Louisiana High School Athletic Ass'n, 430 F. 2d 1155 (5th Cir. 1970), Colorado Seminary, 570 F. 2d 320 (10th Cir. 1978) and Walsh v. Louisiana High School Athletic Ass'n, 616 F.2d 152 (5th Cir. 1980). The reasoning behind these decisions has been summarized as follows: "The property interest in education created by the state is participation in the entire process. The myriad activities which combine to form that educational process cannot be dissected to create hundreds of separate property rights, each cognizable under the Constitution." Dallan, 391 F. Supp. 358, 361 (M.D.Pa. 1975). The Colorado Seminary court had the same idea in mind when it said that to be deprived of "one stick" in the "bundle" of things that comprise the educational process did not necessarily mean that due process was thereby invoked.

Of course, while not denying its importance to some, it is not surprising that preventing a pupil from playing in school sports activities would be seen quite differently from placing a child full time in special education class. Thus, the language of the sports cases might be discounted as unnecessarily extravagant.

Let us then look at a group of fairly recent lower court decisions on a variety of related issues that are perhaps closest in subject matter to the school sorting we've considered. None of these cases has become an important precedent, and they take rather different approaches. But as a package, they enrich our understanding of the issue.

In 1980 the Fifth Circuit concluded that a high school student had no property right to enroll in specific classes that she and her parents sought admission to in order to further her career goals. In a very short opinion the court concluded that access to school was one thing but that access to specifics in the curriculum another. Citing _Goss_, it said that as to the latter the plaintiff made "no allegation of any "independent sources such as state statutes or other rules" entitling the plaintiff to the particular course of study..." _Arundar v. DeKalb County School District_, 620 F.2d 493 (5th Cir. 1980). (Note again, that while the case involves the sorting process, plaintiffs seem to want the constitution to insist that the sorting _rule_ be one of family choice; they did not seem to object to the _application_ of the school's sorting rules.)

By contrast, in _Everett v. Marcase_, 426 F. Supp. 397 (E.D.Pa. 1977), a federal district court held, also citing _Goss_, that an involuntary "lateral transfer" for disciplinary reasons from one _regular_ public school to _another_ did require due process protection. Although the court held that the lateral transfers involve due process protected property interests, we know that it did not cite any independent basis for the right to remain in one's local, or original, school. The court instead emphasized both the _magnitude of the deprivation_ and the _disciplinary_ basis of the transfer, arguing that on these counts the facts of _Goss_ were, if anthing, less compelling. On the other hand, it suggested in dictum that no due process rights would attach to "purely administrative" transfers or school assignments for non-disciplinary reasons, asserting that "there is no inherent right of the pupil to attend the school of his or her choice..." _Supra_ at p. 400.

In a case with important racial aspects, Debra P. v. Turlington, 644 F.2d 397 reh. en banc denied 654 F.2d 1079 (5th Cir. 1981), plaintiffs challenged Florida's adoption of the requirement that public school pupils pass a statewide functional literacy test as a condition of recieving a high school diploma. The important point of the case for our purposes is the court's conclusion that through the creation of a public school system, mandatory attendance rules and past practices, the state had created a due process protectable "expectation" that regular attendance plus the receipt of passing grades would suffice for a diploma. What is noteworthy, therefore, is that the "property right" did not arise directly from a specific statute but rather, mainly, from past community understandings and local rules. Moreover, the dissenters from the denial of the en banc rehearing complained in vain that Horowitz taught that Goss's property right holding was inapplicable to "academic" matters like this. Of course, in its details Debra P. is rather unlike our problem since it is not really about sorting as we have described it; moreover it primarily challenged a substantive decision that Florida made. Still, the court made clear that an important change like this in the academic treatment of pupils could not be done without procedural due process, such as giving pupils adequate notice that the new requirement was going to apply to them.

A contrasting approach to a substantive change in the public educational program is reflected in Zoll v. Anker, 414 F. Supp 1024 (S.D. N.Y. 1976), where plaintiffs challenged New

York City's shortening of its school day by 45 minutes. Again, although the basic challenge was to a substantive change, the court, in dealing with plaintiffs' claims, considered whether they had been deprived of a due process protectable property right. It held that they were not, noting that a companion state court case had decided that plaintiffs were not denied anything to which they were entitled under state law. By clear implication this rejects the notion that such due process protected entitlements could arise from the long-standing and clear practice of having a longer day. Of course, to find that there was an entitlement to the longer day for procedural due process purposes would not have meant that this entitlement could not be taken away (after all, welfare can be cut back); it is only that, as the Debra P. court put it, the day could only be cut back through fair procedures. But the Zoll court was steering clear of the whole issue arguing that to hold that such decisions as "to change classroom hours into study halls, or to teach 'new math' rather than 'old math' or to require attendance at an assembly hall . . . deprives students of 'property' interests would vitiate the state's acknowledged 'power to prescribe the school curriculum' . . . " supra at 1028. While this seems far too strong a conclusion to us (the court seemingly having mixed up substantive and procedural rights), it at least reveals a contrasting attitude to that of the Debra P. court.

Grove v. Ohio State University College of Veterinary Medicine, 424 F. Supp. 377 (S.D. Ohio 1976), is interesting because the court there held that due process applied when an applicant was denied admission to Ohio State's College of Veterinary Medicine. Oddly, the court held that his exclusion denied him a liberty interest (the opportunity to engage in his chosen profession) but not a propery right (since it concluded that the applicant had "no objective expectation" that he would be admitted). We find it more than a little bizarre that one could be deprived of a constitutionally protected liberty interest in being a veterinarian when one had no reasonable expection that he could even get into veterinary school. If nothing else this decision suggests that the use of the liberty-property concept as a threshhold test can sometimes be more obfuscating than helpful. In any event, and even though the court later holds that the plaintiff was in fact provided with due process in the handling of his application, the important point for our purposes here is that we see that the applicant's lawyer did find a way to sell the court on the proposition that a school admission decision was subject to due process guarantees. And, plainly some aspects of the sorting process we studied involve school admission decisions.

Smith v. Dallas County Board of Education, 480 F. Supp. 1324 (S.D. Ala. 1979), was potentially the most relevant lower court case for our purposes. Unfortunately, the decision turns out to be less helpful than it might have been. The dispute arose out of the aftermath of the implementation of a school desegregation decree. As a result of that implementation, a number of students were transferred from a traditionally structured elementary school to one that had a non-graded curriculum. Rather than assigning pupils to a specific grade level, the latter school grouped them according to their functional ability as determined primarily by their performance on a standardized test. A number of parents complained about the consequences to their children arising from the transfer and eventually brought suit. Although the case had racial overtones and included raced-based claims, plaintiffs also raised a non-racial due process claim.

It appears that the main objection of the parents was that their children were transferred at all, but as this seemed clearly required by the desegregation order, their legal argument focused on the fact that in the non-graded curriculum their children were placed in classes that seemed behind their previous placements; evidently, the children tested below their previous grade level. A substantive challenge to the non-graded curriculum itself, however, also seemed hopeless and hence a procedural due process claim was made. Putting aside the background of the case and the real objectives of the plaintiffs, therefore, on the surface this aspect of the case seems quite appropos for our purposes in that it seems to be a direct challenge to the routine sorting process.

Unfortunately, the court's handling of the challenge is not very satisfactory. It focuses on whether the placement tests used at the school impaired the pupils' general education rights as recognized in Goss, and it goes on to "hold" that the tests do not. Rather, as the court saw it, the tests help assure that the pupil is placed at the ability level that best enables him to utilize his education right guaranteed by Goss. This is unsatisfactory. Although the court says that the plaintiffs simply objected to the testing procedures, absent further specification of that complaint, it is not at all clear just what the complaint was supposed to be. If this was meant to be merely a back door way of precluding the use of a non-graded curriculum by preventing the school from sorting anyone into its various levels, then (apart from, say, race claims) it deserves a speedy dismissal. However, if the complaint instead is that these tests generally fail to put pupils at the proper level or that they are often inaccurately administered or interpreted, then the courts response is a non sequitor. The first issue instead would be whether mainstream misclassification denied pupils of a due process protected right, and only if so then whether other procedures beyond those now available in the school were required to minimize the risk of error.

Interestingly enough, depsite its "holding" the Smith court went on to conclude that even if the tests "did infringe upon the property interests which the plaintiffs have in a public education, no due process violation could be presented by this case." Supra at p. 1338. As will be discussed below, in this part of the court's opinion it is held that the existing placement system, which included a grievance procedure, would in fact meet the requirements of due process if they applied after all.

Last let us mention Valadez v. Graham, 474 F. Supp. 149 (M.D. Fla. 1979), which was brought on behalf of migrant worker children who, because of the harvest schedule in their parents' work, returned to their home school well into the fall semester each year. Although again racial claims (Hispanic) were made (and rejected), the plaintiffs included a due process count. Their basic assertion was that the procedures used by the home junior/senior high school to work them into the school program nine weeks into the term were unfair. Once again, to the exent that what plaintiffs really wanted was a special curriculum designed for them, this is a substantive (and not a promising) claim. However, plainly, procedural objections were made too -- to the school's method of accepting work started in other schools that fall, to its grading practices for those entering late and so on. The Valadez court, however, makes no effort to scrutinize each of these areas separately to see whether a protectable property right is at risk. Rather, it effortly decides the "property right" issue on behalf of plaintiffs merely by concluding that these are decisions affecting public education to which plaintiffs have a "legitimate claim of entitlement." Supra at p. 157. Indeed, this court doesn't even seem to think that the school decisions must be important before due process is required. We find that this automatic application of Goss to, seemingly, any public school decision, is out of step with many of the other cases, and probably is not what the Supreme Court would accept. And it is disappointing to us that in a case involving some aspects of routine school sorting the court didn't at least face up to the competing wisdom of an alternative and narrower approach to the application of Goss to these facts. Perhaps the defendants gave in too quickly on the issue. It is also important to note that, having found that due process applies, the court goes on to hold that the requirements of due process were in fact met, thereby denying relief to plaintiffs. Later we will look at what procedures were thought to be enough.

3. Composite precedent reviewed.

What is to be made of this bundle of lower court decisions together with the Supreme Court's three school due process cases? Although Arundar can be explained away as involving poor pleading, and although the language of Evertt and Horowitz can be dismissed as dictum, nonetheless, in cases making the distinction, some hostility to applying due process to "academic" as opposed to "disciplinary" decisions plainly emerges. After all, procedural protection against wrongful punishments is a familiar and comfortable path for courts, whereas they are perhaps understandably leery about getting too involved in academic matters. Still, this distinction does not explain a number of other cases including the handicapped/special education line; nor, as we will see, is it easily applied to "routine" school sorting. Moreover, some cases, to be sure decided before Horowitz, are oblivious to the distinction.

Perhaps stigma -- say, of special education and of disciplinary treatment -- is key. But this concept is probably even more difficult to apply to school sorting generally -- and it is by no means clear why, say, academic dismissals aren't strongly stigmatizing too. Of course, the special education and other due process granting cases may be "wrong" in the sense that the Supreme Court would reverse them if given the opportunity.

Or perhaps the racial aspects of many of the cases are unstated, yet key, considerations. After all, racial sensitivity about I.Q., together with the much greater tracking of blacks than whites into classes for the mildly retarded and the greater incidence of blacks failing Florida's high school literacy test, are social facts that could easily make a judge feel that fair treatment in assignment to special education or the granting of high school diplomas is critical. So too, the higher incidence of black than white suspensions and expulsions (let alone the racial context of Goss itself) and the apparent higher incidence of corporal punishment of blacks than whites is not to be ignored. The migrant children case, where due process was required, also had racial overtones. By contrast, disqualification from interscholastic sports, inability to enroll in certain technical courses, "purely administrative" transfers from one school to another, shortening the school day and the like are not now viewed as race-sensitive issues (whatever the actual facts of incidence). On this dimension, various aspects of routine school sorting probably come out differently - e.g., compare the likely lack of racial sensitivity over school or teacher transfer requests with the more delicate matters of grade promotions or assignment to "slow" track or classes in high school and junior high. On the other hand, racial features were not enough in the non-graded curriculum cases and no racial aspects seemed present in the vet. school admissions case.

One resolution of most of the cases would suggest that, despite broader and narrower language, there are two theories: first, significant disciplinary treatment is special and attracts due process protection; and second, in elementary and secondary education what the statutory entitlement means is that one has the right to get into and to remain in the "mainstream" program unless ousted pursuant to appropriate due process measures.

As for the latter, is it not fair to say that one does normally have an "objective expectation" to attend the ordinary classes in one's local school? Perhaps this "objective expectation", arising more out of tradition than from any clear state law, can be best said to form the basis of the needed property-liberty interest. This approach is probably defensible even under the more restrictive U.S. Supreme Court approach employed of late, for it too has distinguished "hopes" from "justifiable expectations." Indeed, Goss itself referred to state law on "other rules."

We will see, however, that applying the "mainstream" idea to routine sorting is not so easy. Moreover, it is not clear that these two classes of decisions (non-mainstream and discipline) should be the exclusive things to attract due process in the school setting. The functional literacy test case illustrates the point (unless graduating with one's peers is seen as part of the mainstream). In the end, perhaps these two categories are merely ways of describing extremely important decisions, central to the schooling process; if so maybe "important school-related deprivation" (at least through high school) is what, in the end, will get due process protection after all.

A final supposition worth airing is that "illicit" considerations in fact enter into the "first step" analysis. That is, despite the formal separation of the two, the judges hear and can't avoid thinking about the second step while deciding whether the threshhold is met. And judicial views of what little good and what possible harm due process procedures might do when laid on top of some kinds of decision-making could well influence the courts to keep out altogether by saying the first test simply isn't satisfied. This "realist" view is hard to test, but is to be kept in mind when we soon focus the themes arising from the case law on various parts on the routine sorting process.

4. Analogies from other fields.

First, however, we want to report on our inquires into analogies from other fields. Exclusion or explusion from school, matters of access, can be characterized as involving total deprivation; school sorting by, contrast, can be seen as the mechanism by which schooling opportunities are allocated. Hence, while some deprivation is inevitable, total deprivation does not occur. Starting from this distinction we decided to consider what, if anything, we might learn from judicial handling of it in cases involving other critical human needs.

We looked, for example, at issues arising from proposed transfers of medicaid patients from one nursing home to another. Concerns among gerontologists about "transfer-trauma" have spurred lawyers to seek due process protectionss prior to such transfers. The lower court case law does indeed support the claim that such rights attach to transfers from one certified facility to another. See e.g., Klein v. Califano, 586 F. 2d 250, 257-58 (3rd Cir., en banc, 1978). However, the courts seem to have an easy time finding that patients, in general, have objective expectations to remain in the facility of their choice because federal statutory porvisions and relevant regulations to that effect. 42 U.S.C. Section 1396 a(a)(23); 45 CFR. Section 249.12(a)(1)(ii)(B)(4)(1978), 41 Fed. Reg. 12884 (1976). By contrast, when a nursing home has been decertified so that transfer away from the facility would necessarily occur, the Supreme Court recently held that no pre-transfer hearing was constitutionally required since the recipient had no right "to continue to receive benefits for care in a home that had been decertified." O'Bannon v. Town

Court Nursing Center, 48 U.S.L.W. 4842, 4845 (1980).

In the public housing area, it seems well established that tenents are entitled to procedural due process prior to eviction. This is perhaps like total deprivation see, e.g., Escaleva v. New York City Housing Authority, 425 F. 2d 853 (2nd Cir. 1970) cert. denied, 400 U.S. 853 (1970); Caulder v. Durham Housing Authority, 433 F. 2d 998 (4th Cir. 1970). What about rent increases, however? One view is that the objective expectation to "low cost housing" requires due process on this question too. See Geneva Towers Tenants Organization v. Federated Mortgage Investors, 504 F. 2d 483, 489 (9th Cir. 1974). But this view has been rejected elsewhere and seems to be the minority rule. See McKinney v. Washington, 442 F. 2d 726 (D.C. Cir. 1970), and Hahn v. Gottlieb, 430 F.2d 1243 (1st Cir. 1970).

Taken together then cases suggest the general uncertainty with which the courts are approaching more complex problems involving basic human needs. On the one hand, there is the inclination to protect all important features of a material good whose total and wrongful deprivation would plainly amount to a denial of a protected property right (or liberty interest). On the other hand, some courts will impose due process protections on denials with respect to such property right that do not amount to total deprivations only when plaintiffs can point to some clear source for a claimed objective expectation with respect to the feature in question. This, in general, is the same rather divided approach that we saw lower courts take in the school cases. Hence we find these possibly analogous areas not especially revealing.

5. Application of precedent themes to school sorting.

Now by comparing special education sorting with the sorting we've considered, we first want to show some of the difficulties of distinguishing between them. It is easy to imagine that great educational and emotional harm could come from being wrongfully placed, say, in a class for the retarded. It is also easy to see how a judge would have little trouble making a qualitative distinction between special education and the ordinary education that he or his children probably experienced. With this simple division, it is readily understandable how he might treat the former as virtually the same as non-school, or, in any case, as an opportunity so radically a different so as to see the wall between the two as sufficiently high enough to deem the movement over it to amount to a loss of a distinct liberty or property interest. However, when the richer complexity of the sorting process is set out, special education classes now seem more aptly described as part of a continum -- albeit at or near one end. With that mindset, it is much harder to see where, if anywhere, the line is to be drawn. For example, it is not easy to see why either the failure to promote to the next grade on the asserted ground of "social immaturity" or the assignment to a particular teacher on the asserted ground that the pupil had been a "behavior problem" should be treated differently from the assignment to a "learning disability" class or to a class for the "educationally handicapped", two major special education programs. Is either the harm or stigma any greater in the latter? We're skeptical. To be sure, wrongful assignment to classes for the substantially mentally retarded, especially since such assignments are likely to be permanent, might be thought to risk more harm than most, if not all, other sorting decisions. But the lower court cases noted above were not limited to the treatment of the most severely handicapped.

So far we have been treating school sorting rather generally. It is time to focus on some specifics. Consider the failure to be promoted from one grade to the other in elementary school. Surely the core or mainstream of American public schooling includes the ideas of age peer grouping and annual progression from one grade to the next. Ought it not follow, therefore, that procedural due process restricts the ways schools can deprive pupils of the "right" to remain with their peers and go on with them to the next grade? Note too that while the reason for having a child repeat a grade might be academic difficulty, the decision instead may well be based on the child's behavior and hence have a disciplinary-like quality. In these respects, the promotion decision seems, if anything, more like decisions that lead to assignments to special education classes than like analogous decisions made in higher education institutions where failing a course or failing out normally rests on academic considerations alone. In any case, the grade promotion example shows the diffuculty of making the academic -- disciplinary distinction. Of course, emphasizing this distinction assumes that the Court's dictum in Horowitz about academic decisions would be applied to elementary schools. But because of the intense and personal, yet often very private, connection of teacher and student in elementary school, and because the decision of the single classroom teacher can have such a dramatic effect on the pupil, it may be far less appropriate to shield such decisions from due process protection on "academic freedom" grounds than it is to protect the grading judgments of university or even high school teachers. Moreover, if Debra P., regarding the functional literacy test for high school graduation, is right, then wouldn't due process apply to grade promotion as well?

Decisions that bar a child's transfer to another school may at first seem quite different. While, to be sure, there is a clear deprivation, where does one find the right that is sought to be protected? If anything, the core of American public educations includes only the "right" to attend one's neighborhood school. But while state law is probably silent, there are typically specific local rules that are meant to govern such formal transfer requests -- especially in the case of open enrollment schemes or transfer requests that are to be made to the central administration before the year starts. Ought not due process then apply to help assure that "rights" established by these rules are protected? Note that, by contrast, during-the-year transfers informally made among principals seem virtually standardless (i.e., fully discretionary) so that there may well be little basis for a pupil claiming that he had an objective expectation with respect to this sort of transfer possibility. Although Valadez, involving the in-transfer migrant children, would seem to imply that even these decisions are subject to due process.

Failing to get the elementary school teacher that one wants presents a slippery problem since the student is still both in the mainstream and in the right grade. And it is difficult to see where a "right" to a specific teacher would be grounded, even though the deprivation can readily be described. The Smith case on the non-graded curriculum is in this vein, as is Arundar, on getting into a desired course. Still, once again, if individualized judgments are made about where to place a child, which judgments are supposed to rely on school or school district criteria, can not the right be said to come from the school's own rules and the expectations they can legitimately be said to create? Moreover, to the extent that a school seeks to divide up friends for the next year when, say, they are too much of a "clique" or "too distracting or distracted" isn't this directly depriving them of the liberty/association interest emphasized in Goss? Recall too the liberty interest protected in Grove, the college admissions case.

It is, of course, always important to keep in mind that this analysis does not suggest that it is impermissible to use these criteria to assign pupils to teachers, but rather that such assignments must comport with (appropriate) due process guarantees. It is also crucial to appreciate that all (or nearly all) schools may well now provide all (or even more than) due process would demand even if the Constitution did apply.

Furthermore, just as the Court has seen the procedures guaranteed by due process as individualistic ones, it has avoided finding that due process applies when the alleged right is seen as a collective one or, what is much the same thing, the decision is simultaneously and broadly similar in its effect on a group. Nor have the courts been eager to find any due process protection when no factual issues are at stake. Hence for these reasons it would, for example, seem much less likely for courts to impose procedural due process on these sorting decisions: to adopt or to apply random assignment to second grade teachers, to shift a teacher from one grade or class to another, to adopt (or perhaps to operate) a "scramble" system of assigning high school pupils to their classes, or, as we saw, to adopt a non-graded curriculum, or perhaps to assign second graders to "advanced" "regular" or "slow" math cases on the basis of standardized test scores alone. Assignment to ability classes on more complex criteria, however, could be quite a different story. (We do not think it would importantly matter that many school sorting decisions involve changes so that it could be verbally more awkward to claim that the pupil is deprived of what he or she "already has.")

This brief canvas is perhaps best seen as giving a sense of how a court sympathetic to imposing procedural regularity on school sorting might approach, and perhaps discriminate among, a range of due process claims. Put differently, what the precedent altogether suggests is that creative lawyering about school sorting decisions just might succeed in convincing a trial court that due process does apply at least to some aspects of the routine sorting process we have studied.

In the end, because of the jumble of results, the safest prediction at this point is that it is hard to predict confidently how the courts would decide. Moreover, much of the precedent is probably unreliable since the plaintiffs often were really making substantive rather than procedural objections. Furthermore, because school practices and hence justifiable expectations vary, the availability of due process protection could well vary from place to place within states, let alone among states. Further inquiry, however, seems inappropriate until we present some discussion of what process might be due. Not only will this give a fuller picture of what changes we might be talking about for the schools, but also, since judges can not blind themselves to the later even when facing up to the former, neither should we. Besides, one should not forget that in a number of cases where the court easily found due process applicable, it also was easily convinced that due process was in fact already guaranteed; hence we are reminded that to win due process guarantees may well not be to win any changes.

D. Process That Might Be Due

It is often said that the essence of due process is fairness (a vague idea) and that fairness demands an unbiased decider and fair procedure (this too is vague). Doctrinally, once the liberty or property test is met, claims to due process are to be decided under the Matthews v. Eldridge formula. That means that once due process applies, as much process is required as is cost effective in the Matthews sense. In practice, a check-list of procedures has developed, and the leading cases have been mainly fought over which of the maximum elements are required.

According to the authors of a well known treatise on constitutional law, in non-criminal matters the full range of due process protections would include these essential elements: "(1) Adequate notice of the charges or basis for government action; (2) a neutral decisionmaker; (3) an opportunity to make an oral presentation to the decisionmaker; (4) an opportunity to present evidence or witnesses to the decisionmaker; (5) a chance to confront and cross-examine witnesses or evidence to be used against the individual; (6) the right to have an attorney present the individual's case to the decisionmaker; (7) a decision based on the record with a statement of reasons for the decision." (Rotunda, Nowack and Young, Constitutional Law at p. 499).

The tailoring of the scope of required (or sufficient) procedures to individual cases is well illustrated by some leading Supreme Court cases we've already mentioned. Hence, when the state proposed to cut off a beneficiary's welfare check, the Court in Goldberg held that prior to such a deprivation virtually all of the items from the list of safeguards had to be offered. By contrast, in Goss the Court held that prior to a short term suspension from school, a far more abbreviated form of due process would suffice -- essentially that the student had to be told of the charges and, more or less on the spot, be given a chance to tell his side of the story in hopes of convincing the potential suspending official that the suspension was uncalled for. In Horowitz the Court said that (even if due process applied to academic dismissals) even the informal hearing required for short term school suspensions in Goss was unnecessary where the medical school in question had (1) given the plaintiff both notice that her poor performance was jeopardizing her academic future and an opportunity to prove herself through special oral and practice exams and (2) taken the decision to exclude her through a fair internal decision-making process. In recent cases, the Court has concluded that in a variety of settings post-deprivation review of the governmental conduct would suffice; this is illustrated by Ingraham where the later opportunity to sue in tort for wrongful corporal punishment was held to afford pupils adequate due process.

1. Individualization and two-way communication

Notwithstanding these variations, two features dominate the Supreme Court's opinions: individualization and two-way communication. That is, the Court seems always to include elements (like the opportunity to make a presentation to the decisionmaker) that necessarily imply an individual response to the government communication of a decision or proposed decision. Even in *Horowitz*, where there due process did not require an opportunity personally to appear at the time the decision to dismiss the student from medical school was being made, individual, two-way communication was contemplated. There the student's opportunity to give evidence about the relevant issue -- her clinical skills and general academic progress -- was both routinely and specially afforded until the cumulative evidence showed her not sufficiently talented to continue.

On its face, however, the *Matthews* calculus would permit, in appropriate cases, for due process to be satisfied with one-way communication -- a statement of the decision, perhaps together with an explanation of reasons for it. Moreover, under the appropriate cost-benefit circumstances, such one-way communication might be presented broadly, containing only general information; that is, the *Matthews* formula itself does not even require the communication of individual information. Yet we have found no Supreme Court decision in the *Goldberg* line which requires so little.

One important instance where this might have been thought appropriate was O'Bannon, the nursing home decertification case: the Court might have found that the current residents of the home were constitutionally entitled to a one-way explanation of the decision to eliminate their home from the list of those that Medicare would support. Instead, the Court decided that the threshold test for due process was not met and one reason was that there was no protectable interest at stake; the interest, said the court, was one of a group and not a property right of individuals. This pattern makes us skeptical about whether, in fact, a case under the Goldberg line could arise in which due process required only one-way group communication.

What this suggests for school sorting is that the due process tradition best fits instances in which parents object to the individual treatment of their child, seek to argue for an alternate placement, demand a child-specific explanation for the decision and so on. Hence, an objection by parents to a particular teacher assignment for their child, the unwillingness of the school to promote the child to the next grade, the refusal of the school to change the child's teacher after the year begins, or the rejection by the school of the family's request to transfer the child to another school illustrate the sort of decisions that could readily be brought into the due process mold. They involve individualization, child-specific information, and, probably, a desire for two-way communication. By contrast, where families are seeking either general information about the sorting process or detailed information about the attributes of alternative teachers or courses, the parallel to the usual procedural due process case is not easy to make.

An explanation for this lies in the divergence between our models of disclosure and what the Court now emphasizes as the purpose of due process. First, even though this need not be so, the Court does not recognize the take-up of entitlements or informed choice as values to be served by procedural due process.*/ Given the Court's posture, however, since detailed information about alternative teachers or classes best serves these models of disclosure, we should not be surprised to see that it is not constitutionally mandated. Second, the Court lately has moved away from the idea of the consent of the governed as a basis for procedural due process. Hence, so too, information intended to serve this model is understandably overlooked in due process cases.

But this "purpose-based" explanation for the Court's approach is not altogether convincing. The Court plainly has concerned itself with the model we call the control of the official discretion. Yet, as we argued in Chapter 7, disclosure of general information about the sorting process -- one-way communication of the criteria, the alternatives and the process -- can sensibly serve to control official error and abuse.

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* After all, as we argued in Chapter 4, unawareness of take-up rights can be thought quite unfair, and due process is supposed to be about fairness. Moreover, the failure of families to make informed choice creates an error, and the Court does see due process as aimed at error control. Although this is perhaps not an error that we usually would say is caused by government.

The upshot is that in some circumstances, if the Goldberg threshold test is met, then families will presumably be entitled to child-specific information and the right to contest the decider's proposed judgment, even if policy analysis suggests that the receipt of general sorting information would be most appropriate. (Of course, perhaps in those circumstances the courts would conclude that Goldberg's procedural due process does not apply.)

Another possible mismatch between policy analysis and legal requirements can occur in terms of outreach. That is, due process may require more of a request by parents for individual explanations of a child's placement than policy analysis suggests is appropriate.

In sum, while disclosure policy and procedural due process policy are concerned with similar things and envision overlapping remedies, they are not the same. This, of course, does not mean that due process should simply be deemed inappropriate to routine sorting. But it does show that a judicial solution employing procedural due process may not be as desirable as a legislative one. (It is perhaps comforting, however, to see that due process seems to concern itself with the sorts of disclosure that appear to be politically most difficult to achieve.)

2. The cost-benefits calculus in prior school cases

Although Matthews was yet to be decided, it was foreshadowed in Goss, and in Goss the weighing contemplated by the cost-benefit approach didn't present much of a problem to the majority. On the one hand, it seemed intuitively obvious that a little conversation with a pupil prior to his suspension could lead to fewer errors; on the other, the Court thought this talk would not be costly either in terms of the time it takes or the school's authority relationship to its pupils. Since the Goss plaintiffs had not even been offered this minimal opportunity, and because the Court excluded consideration of longer suspensions, it didn't really have to face up to cases where it would have to admit there are serious considerations on both sides of the cost-benefit scale. The dissenting justices, however, saw serious costs to the school, in terms of both the burden of the hearing itself and the potential for judicial review of official school conduct.

In both Ingraham and Horowitz the Court didn't have to say what was minimally required; rather it approved what was voluntarily provided as constitutionally adequate. In doing so, however, it decided that the additional process that plaintiffs demanded was not cost-benefit justified.

In Horowitz, the Court tried to make the cost benefit issue seem easy. It declined to order additional process, claiming that there would be costs in terms of educational relationships (making teacher and student adversaries), and no gain in terms of accurate decisionmaking. While these conjectures may be right, the Court is by no means convincing. Whether a personal appearance before the decision-maker would improve accuracy depends importantly on what is the precise standard for dismissal, something about which the Court was notably silent (perhaps because the defendants had no precise standard). And although it is imaginable that there would be harm to the teaching process by having administrators hear out students who are about to be academically dismissed, this is probably belied by experience at schools that grant informal hearings (and more). Anyway, what some consider a loss in changed teacher-student relations, others will consider a gain.

In Ingraham Justice Powell's opinion for the five-four majority again tries to make the cost benefit calculus seem easy, although with even less success. He first tries to minimize the incidence of improper corporal punishment so as to establish that there simply was little opportunity for increased accuracy through the imposition of additional procedures. One important reason for the low incidence, says Powell, is the deterrent effect of the child's tort right against teachers and other school officials for unreasonable corporal punishment. While this approach is fair enough as a general matter, the record in this case, as Justice White points out in his dissent, suggests strongly that at least as many (or more) errors were being made in imposing corporal punishment than Goss showed were being made with respect to short term school suspensions. Powell later admits that pre-paddling procedures like those required in Goss "might reduce that risk marginally" (430 U.S. at p. 682), but concludes that such gains are far outweighed by their costs.

As to costs, first cites the time and attention of school officials, although the same claim was plainly not convincing in Goss. Assuming, as Powell does, that the Goss procedures as applied to corporal punishment would involve a second school employee in the decision to paddle, Powell fears that if a teacher's proposed paddling were rejected this would undermine that teacher's ability to control the classroom. He also argues and that the creation of a waiting period before corporal punishment is imposed could be bad in terms of anxiety created for those students who are going to be paddled even after the informal hearing. Once again, however, these same two points can be made about suspensions but were not persuasive in Goss. Moreover, we are not very sympathic about protecting the classroom authority of teachers who, if they had been left to their own devices, would be committing torts against their pupils. Finally, Powell argues that imposing due process procedures in advance of paddling might force the abandonment of corporal punishment and the shift to other disciplinary measures. In one sense we see this as an argument on the other side; if corporal punishment is of so little value to school officials in terms of educational and disciplinary gains that they are unwilling to suffer the costs of simple pre-paddling procedures, then this suggests that there is very little legitimate state interest in maintaining corporal punishment at all. On the other hand, although Powell is not very clear about it, teachers can well react to a requirement of consultation before paddling by shifting to other forms of punishment, including psychological mistreatment of children, that can not be policed by the school and could well be worse for some children. In short, in this respect due process could create fallout that would involve costs of an indeterminant amount. But, of course, that risk was equally true in Goss.

In sum, the Court fails to make a convincing showing why one shouldn't assume, as was done in Goss, that a little conversation with the student before paddling will yield error reduction and dignity improvement at a very modest burden on the school. In the end, it seems to us that what mainly distinguishes the cases is not the analysis in Ingraham but the fact that Justice Stewart apparently changed his mind (although he never gave an explanation), thereby giving the four Goss dissenters the one vote margin needed to carry the day in Ingraham. All of this is not to say that Stewart shouldn't have changed his mind or that Ingraham is necessarily wrong; rather it shows that making the cost benefit analysis contemplated by Matthews is by no means the easy matter that the Court in these cases often suggests it is.

In our judgment, in applying the Matthews test the justices first try to focus on just what is it that plaintiffs want that the school does not already provide. They then ask themselves whether, in view of what the school does provide, it is reasonable to impose the new requirement? And in deciding that question they make an intuitive judgment that incorporates their own values together with what little empirical evidence might be available. Having made up their minds they take an advocacy stand in their opinions that tends to mask the difficulty of sensibly applying the Matthews test.

Lower federal court judges, we think, do the same thing, although the schooling decisions we have considered aren't especially revealing as we will explain. In the migrant student case, for example, the court discusses how the district tries on an individual basis to award appropriate credit for work done in other schools. In applying Matthews it says "The court is at a loss to find any better method for transferring credits and grades. Student input would be of minimal value because students cannot possibly know the material to be taught and the courses offered at Groveland. . . Moreover, any student dissatisfied with the school's decision is given the opportunity to speak with the teacher and the guidance office about it. In this informal manner, the possibility of the school denying credit where credit is due, is very unlikely . . . Indeed, requiring a formalized notice and hearing procedure would be attacking an ant of a problem with a cannon of relief." 474 F.Supp at p. 158. The court also refers to evidence showing that students who did not arrive until well into the fall semester had in general been well treated in the past through the school's effort to integrate them into its program. We note that the communication of individual decisions with reasons and a chance to object are here seen as at the heart of due process. But we really don't learn what minimal elements will suffice; nor did plaintiffs seem to offer particular procedural alternatives for the court seriously to consider.

The veterinary school admissions case is much the same story. The court held that due process was well satisfied when an impartial admissions committee provided the applicant with explanations as to why his academic performance was presumptively unsatisfactory in math and chemistry and granted him three special opportunities to present favorable information in support of his application. But the court does not make clear (nor did it have to) just how many of those elements were required by due process; and the plaintiff's case, in the end, rested more on his claim that he was mislead during a personal interview than on an assertion that some critical accuracy-enhancing process was omitted.

In the case involving non-graded curriculum, it will be recalled, the court concluded that even though due process was not applicable, sufficient fair procedure had been provided anyway. The court found that "under regular prescribed procedures, the principal, teachers and professional staff at Valley Grande School attempt to explain the non-graded curriculum and the placement procedures to all students and to those parents who have questions or objections." 480 F. Supp. at p. 1330. The opinion goes on to explain that in this case there was a review of the records of the plaintiff child by the county guidance director as well as a personal discussion with the plaintiff child's mother. Beyond this, the county board of education had longstanding procedures for handling complaints from students parents and school personnel which encourage aggrieved parties "to go first to the teacher, or other staff, then to the principal of the affected school, then to the Superintendent of Education and finally to the Board of Education." Id. at p. 1331. Moreover, the court pointed out, under Alabama law "the State Superintendent of Education has the power to review . . . matters seriously affecting the educational interests" of children in the state. Id. at p. 1331. These procedural arrangements, which the court characterizes as a "grievance" procedure, were said to provide adequate due process. We find it particularly noteworthy that outreach communication to students of general information about the sorting process was a standard procedure in the school (admittedly a school with an unusual program), and that this was emphasized by the court in its decision. However, once again you can't tell whether the presence of that element was critical for due process purposes. Moreover, in the end plaintiffs once more had no clear alternative procedure to propose apart from doing away with non-graded classrooms altogether.

The central element of due process that the court focused on in the Florida high school functional illiteracy test case was the giving of notice to students that this exam would become one of the requirements for graduation. Interestingly enough, this involves one-way communication of general information. Unfortunately, the court is vague about what would be adequate notice, and is not attentive to the competing cost considerations. Perhaps this is because the notice requirement here doesn't really go to accurate decision-making; rather it is a matter of fairness in the introduction of a new substantive requirement.

3. Applying Matthews to school sorting

Our policy analysis in Chapter 7 showed how difficult it is to make a convincing cost-benefit analysis of required disclosure about school sorting, and the impossibility of making one that is value neutral. Even if we restrict ourselves to the model of the control of official discretion and then focus on how disclosure can efficiently improve the accuracy of sorting decisions, the cost benefit calculus is very difficult. What makes a decision "accurate" is often not value neutral. As a result, we think that a judge asked to apply Matthews to school sorting would, necessarily, have to resort to a combination of intuition and his own values in deciding what process is due. One thing this means is that there is a obvious role for effective legal advocacy.

Of course, the judge would be influenced by the Supreme Court's discussions in the three leading procedural due process cases in the schooling area. However, while they provide some general guidelines, they aren't very helpful. As discussed earlier, the escape hatch of the availability of a tort suit which solved the Court's problem of what to do about corporal punishment in Ingraham doesn't seem especially promising in the routine sorting area. Goss too itself isn't very illuminating. Clearly, the direct goal of short term suspensions is to get the student out of school for a few days. This necessity for speed helps explain why a brief informal pre-suspension hearing makes sense. With the routine sorting decisions we've considered, however, time is rarely of the same essence. Therefore, the state's interest in having a summary and prompt process is less.

Horowitz and some of the lower court decisions tell us that judges think that certain academic decisions involve professional judgments on the record, judgments which student or family input are likely to improve very little. Once a case is so categorized, a decision-making hearing (formal or informal) probably will not be required. However, many routine sorting decisions involve determinations with respect to which students and families can contribute relevant information. This is by definition true for grade promotions if they are to be a matter of parental veto. It is also true for school transfer decisions if they are to turn on child care needs, parental work convenience or even gross clashes between the child and the current school teachers. Even decisions about which math or English classes a seventh grader should enter could benefit from family input; after all, parents might have knowledge about why the child does not do well on certain kinds of tests or that he was ill the day a key test was given, and parents might have special insight into the psychological impact on the child of being placed in one track or another. Even assignment to the next year's elementary school teacher, if based upon a judgment about the child's personality, could benefit from parental input.

Moreover, as we have seen, improving accuracy is not only a matter of contributing new knowledge. In addition, careless and invidious or arbitrary decision-making can be checked, and thereby accuracy increased, by disclosure to parents which makes the decider know that he is in the limelight. In short, a official who has to go on the line with an explanation for his conduct should be careful. This is a point which seems largely overlooked in the court decisions in the schooling area. Indeed, better decision-making should occur even if there are no official channels available to challenge the explanation provided, and in the right circumstances providing general information about the criteria of decisionmaking, the process and the available alternatives should largely do the trick without even the need for child-specific information.

Recognizing the somewhat speculative nature of the predictions and the value laden nature and costs and benefits, and assuming in each instance that the threshold test is surmounted, we think that advocates of disclosure ought to argue like this:

(1) Anytime a child is placed in a course on the basis of ability, the school should be required in writing to notify the family of that placement and to give an explanation for it -- on the ground that this promotes accuracy, is very important, and is relatively little burden on the school. Whether an official forum in which such decisions can be contested should also be provided is a harder question that we leave to the advocates.

(2) Anytime a school proposes to have a child repeat a grade the family should be provided in writing with an explanation for the proposal and a statement, assuming this is the school policy, to the effect that the ultimate decision to repeat or not is up to the parents - on the ground that this too can contribute toward accuracy, is important, and is of little burden.

(3) Parents of children who are continuing on to the next grade in an elementary school should be provided each year with information about the alternatives available, the criteria employed, and the process used in making the assignment of their child to the next year's teacher. Of course, they should also be told to which teacher the child was assigned. Once more it can be argued that this can improve accuracy, is important, and is of little burden. Whether or not an explanation should be provided for their child's assignment and whether or not an official forum for contesting the assignment should be provided are matters we leave to the advocates. The former, plainly, raises the spectre of greatly increased costs

to the school quite apart from dollar costs. However, they could be judged quite differently depending on how one felt about things such as whether it is good to keep secret those judgments made about children which, if released, could negatively affect both their own aspirations and the perceptions of their new teachers.

(4) A family seeking to have its child's teacher or school changed during the year should be provided with a written explanation of the criteria and process that is used for making and deciding upon such requests, and if its request is denied, a written explanation why - once more on the ground that it is important, can improve accuracy and is little burden on the schools. Harder is whether there should be notice given to all parents telling of such opportunities.

(5) Finally, and once more, on the ground that these too promote accuracy, are important and cost little, schools should provide in writing to families the rules of the high school arena scheduling system (including whether teachers can refuse access to their class other than by officially announced prerequisites) and the rules governing the selection of electives in junior high, together with a copy of the schedules that are finally arranged for and by their children.

Will these arguments for compelled disclosure be convincing? That will depend in part, we think, on how effective the lawyers are, and in part on the facts of any case that is actually litigated. People aren't likely to go to court over these matters unless they are mad at the school or district about something. If the dispute comes about because of an incident in which an error was probably made (as in Goss) the psychology of the case will be with plaintiffs far more than if the authorities seem to have acted quite properly on the merits (as in Horowitz). This reality of the legal rule for all turning on the idiocyncray of which case happens along may be disquieting to policy analysts, but it is what case-by-case judicial decision-making has always been about. Besides, although cases of first impression can cast long shadows, if the first case is an eccentricity, the courts have shown themselves able to avoid or even overrule precedent countless times in the past.

In any event, the prime advocacy job will be to demonstrate in the detail why specific new procedures/information should improve decision-making and that the burden on the school should be viewed as small. What this means, of course, is that just as the courts try to make the cost-benefit calculus seem easy in their opinions, the challenge to the advocates is to try to show them how to see the case in a light that makes it look reasonably easy.

Although our analysis in this and previous chapters should help courts and lawyers resolve such claims, in important respects we think that a constitutional case over routine school sorting and disclosure is premature. The main thing is that with the right sort of experience one could carry out the cost-benefit calculus with much greater confidence about what would happen if change were ordered. That calls, we think, for some well designed and promoted experiments, a matter to which we return in the final chapter.

E. Other Approaches To Individualized Due Process

We have dealt in this chapter so far with the approach to procedural due process currently employed by the United States Supreme Court. The Court's two-step approach has been subjected to considerable criticism, however, and we want briefly to sketch some of that criticism in order to suggest what other approaches might imply for school sorting and disclosure.

Much of the criticism has been aimed at the threshold test -- on the grounds that it is intellectually indefensible, inappropriate to the purposes of due process, and/or inconsistently or incoherently applied. See, e.g., H. Monaghan, Of "Liberty" and "Property," 62 Cornell L. Rev. 405 (1977); W. VanAlstyne, Cracks in "the New Property": Adjudicative Due Process in the Administrative State, 62 Cornell L. Rev. 445 (1977); Comment, Statutory Entitlement and the Concept of Property, 86 Yale L. J. 695 (1977). Professor VanAlstyne, for example, has suggested a general due process formulation grounded in a broad notion of liberty; under the constitution, Americans would be entitled to "freedom from arbitrary adjudicative procedures." 62 Cornell L. Rev. at p. 487.

If there were no threshhold test, would Matthews' general cost-benefit approach be the way to apply a general right to fair treatment? Professor Kenneth Culp Davis seems to think so, even though he has bitterly criticized the Court for its application of the Matthews test in Ingraham and even though he is skeptical about whether Matthews' three factors well capture all the relevant considerations. In the 1982 Supplement to the Second Edition of his leading Administrative Law Treatise, Davis proposes this formulation: "When officers impose a grievous loss on any person, due process should require not less than the procedural protection that is justified by cost-benefit analysis." at p. 224.

Others are less persuaded by the Matthews approach, both because of their belief that cost-benefit analysis in this context is scientific hocus-pocus and because they reject the Court's virtual restriction of what can count as a benefit to "accuracy." See J. Mashaw, The Supreme Court's Due Process Calculus for Admininistrative Adjudication in Matthews v. Eldridge: Three Factors in Search of a Theory of Value, 44 U. of Chicago L. Rev. 28 (1976); and L. Tribe, American Constitutional Law §10 (1978).

Professor Davis is enthusiastic about Goss-Matthews primarily because once the Court has recognized that due process can be satisfied with less than a full trial-like adjudication, this opens the Court up to requiring some elements of due process in numerous areas that involve more informal and less important decisions than are made in criminal

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prosecutions, but that could still do, in Davis's view, with significant procedural improvement in the name of fairness. The direction Davis is pushing seems to contemplate the imposition of the key Goss features of an informal opportunity to hear the government's charges or plans and to be able to offer your view or story. As Professor Tribe has put it, "these rights to interchange express the elementary idea that to be a person, rather than a thing, is at least to be consulted about what is done with one." Tribe at p. 503 (emphasis in original). The Davis approach would seem to require at least informal two-way individual communication for most aspects of school sorting, since he thinks this procedure is usually readily justified under the Matthews formula. The Tribe approach might compel further two-way communication and other procedures, where justified in the service of personal dignity or general fairness.

Professor Mashaw, however, is much less sanguine about individual two-way communication, at least if improved accuracy is an important hoped-for consequence; this stems from his doubt that such hearing rights (formal or informal) will be used effectively to police the system, at least in comparison with how internal bureaucratic measures (quality control, audits, training, etc.) might work to advance the fair and proper treatment of individual cases. See J. Mashaw, The Management Side of Due Process, 59 Cornell L. Rev. 772 (1974). We have earlier conceded that disclosure is but one way, and perhaps not the most effective way, to control official discretion. It is being offered, however, in the absence of evidence that school systems do much with management techniques of the sort Mashaw suggests.

In 1979 in People v. Ramirez, 158 Cal. Rptr. 316, 25 Cal. 3d. 260 (1979), the California Supreme Court rejected the U.S. Supreme Court's two-step approach for purposes of the California Constitutional provisions guaranteeing due process. Instead, it adopted Professor Van Alstyne's precise formulation ("freedom from arbitrary adjudicative procedures" 25 Cal. 3d. at p. 268). Operationalizing that test, the California court simply added to the three Matthews factors a fourth one emphasizing the dignitary interests of people that are enhanced, says the court, through communication with government. Notwithstanding this embrace of the views of a number of prominent scholars, we have been unable to find post-Ramirez cases in which not having to show a deprivation of "property" or being able to emphasize your dignitary interest has so far made any important difference.

Once you are willing to break away from the existing approach, including the checklist of trial-like due process elements that has developed, then a variety of new solutions are imaginable. One inventive analysis applicable to institutions that have custody of individuals -- mental hospitals, schools and perhaps prisons -- has been put forward by our colleague, Professor Ed Rubin. In an article on the right to treatment to appear in the Spring 1982 issue of The Harvard Civil Rights-Civil Liberties Law Review, Professor

Rubin argues that when the state restricts your liberty by requiring your presence in an institution like a school or mental hospital, it has an obligation to make an individual determination of what is the appropriate treatment for you and regularly to evaluate the treatment for possible modification. In his call for individualization, Rubin assumes that consultation with the individual (or family) affected will sometimes be appropriate on accuracy-improving grounds alone, and usually on dignity grounds. In short, in our terms, he seems generally to favor using due process to bring about individual two-way communication at least in the Horowitz sense, if not in the Goldberg sense of personal participation in a decision-making hearing.

For school sorting, Rubin's approach means using due process to gain for ordinary children what federal law now generally requires for handicapped children -- an individual educational program, arrived at through consultation, and regularly monitored for success. Therefore, Rubin's proposals would provide information to school children and their families at many of the steps in the sorting process we have discussed; assignment to teachers in elementary school and assignment to courses in junior high school are probably the prime examples. His approach, however, isn't so clearly designed for school sorting decisions that contemplate the initiation of treatment changes by students or their parents, or the selection by families of the appropriate treatment. Of course, as we have seen, conventional procedural due process analysis is also not well suited for requiring disclosure in those settings.

In the end, we return to our earlier conclusion. It is true that dropping the Court's two-step approach more readily permits us to construct arguments about how disclosure about school sorting will serve what we have called the control of official discretion (the accuracy objective) and the consent of the the governed (the dignity objective), the things that due process advocates value most. Nonetheless, we have so little firm evidence about how well these values would actually be served by such disclosure that it would be nice to try to find out before courts are called upon to make a guess. This, of course, means experimentation. Moreover, if the results of experiments are promising, they may provide the impetus for legislative and administrative reform without judicial intervention. If nothing else, that sort of reform would have the virtue of allowing bodies other than courts make the value choices that are part of any cost-benefit determination.

II. Required Rulemaking

We have suggested ways in which advocates could argue, and in turn courts could conclude, that the disclosure of general information is required by the line of procedural due process cases starting with *Goldberg*. Yet, as we have said a number of times already, this doctrinal development is concerned primarily with levels of disclosure which contemplate individual information. Indeed, that is why, when describing the arguments we think lawyers should make, we always included with with demands for general information a claim to information about the application of that general information to individual students.

But suppose all you want is, or all that policy analysis justifies is, general information disclosure? Is due process too powerful a legal tool? The answer is that while the Goldberg branch of due process might be, there is another, if undeveloped branch of procedural due process that is not. Hence, we want to conclude this chapter with a brief discussion of a theory of constitutional law aimed directly at compelling the disclosure of general information. It is a theory which applies due process values in a somewhat different way. Put generally, it argues that the due process clause of the 14th Amendment requires state and local agencies, in appropriate circumstances, to engage in what in administrative law is usually called rule making.

In a nutshell the argument is that when government has not adopted and announced the criteria that will govern its decisions and the procedures by which those decisions are made, it is acting, or is so likely to act, in an arbitrary way as to violate the fundamental notions of fairness implied by due process. Put positively, due process is said to require some regularization and disclosure about virtually all levels and sorts of government decision-making.

Although this theory is not especially well developed in either judicial opinions or the legal literature, there is clear support for it in the writings of Professor Kenneth Culp

Davis and in a few cases, particularly a case called Holmes v. New York City Housing Authority, 398 F. 2d 262 (1968). In Holmes the plaintiffs complained that the Housing Authority accepted applications, that each year some of those applicants were given public housing and others were not, and that no one understood why. The Court of Appeals for the Second Circuit, in effect, concluded that the Housing Authority was acting lawlessly and in violation of due process by not having adopted and announced regular application procedures and criteria for deciding who gets into public housing. In short, the opinion asserted that the agency was required to promulgate and follow rules that govern its actions.

As Davis points out, the goal of rule-makiong in these circumstances is not to eliminate all discretion, for that would be undesirable and probably impossible. Rather the objective is "(a) to eliminate unnecessary discretion, (b) to preserve necessary discretion and (c) to provide appropriate control of the exercise of discretion." Davis, Administrative Law Treatise Vol. 2 p. 187 (2nd ed. 1979).

Notice that Holmes' theory of due process by itself does not go so far as to impose procedures on administrative bodies when adopting rules. For example, under the Administrative Procedure Act federal agencies announce that they are going to engage in rule-making; they announce proposed rules; they receive public comments on the proposals; they consider those comments; and then they adopt final rules, at the same time explaining what the public comments were and to what extent they were accepted or rejected and why. As Davis points out, there are arguments for and some judicial support for the idea that APA-like features are constitutionally required by due process. Put in terms of the categories we used earlier, this would mean, among other things, that an agency would have to provide justifications for its substantive decision-making criteria and associated procedures. Be that as it may, that is not what Holmes demands and we put the issue aside here. Instead, we will concentrate on the call for the adoption and disclosure of the rules themselves.

Applied, for example, to the assignment of teachers in elementary schools, due process would thus force schools or school districts to announce what the assignment criteria are and what procedure are used in implementing those criteria. This would seem necessarily to imply as well the disclosure of the alternatives among which the decider selects. In short, the Holmes theory fits in nicely with what we have described as three levels of general information about school sorting.

There actually isn't a great deal more to be said about this theory. As Davis concedes the contours of the doctrine are undeveloped and its precise source is murky. Sometimes in federal agency cases, the courts that have followed the Holmes lead rely on an idea of excessive delegation; other times they insist on Holmes disclosure as a precondition of judicial review, or when other constitutional interests are at stake, or when there has been a history of past legal violations by the bureaucracy. In Holmes and a few other cases, however, none of these "plus factors" is present, and a broad notion of due process sufficed. And apart from Davis' interesting discussion on pages 128-140 of his Administrative Law Treatuse (Vol. 2, 2nd ed. 1979), there is little that has been written on the theory.

Therefore, given our limited experience with the Holmes doctrine, it is difficult to predict just how well it might be received when attempted in the school sorting area. For one thing, since the Holmes doctrine is not very well developed, it is not clear what, if any, arguments might successfully be put forward by agencies attempting to fend off claims for disclosure. Professor Davis is a believer in the inevitable necessity of the exercise of official discretion, and he appreciates the need for informal decision making. Nonetheless, he sees great promise in the expansion of the Holmes doctrine and its use in all sorts of informal administrative processes. If he is right, then surely school sorting is a promising candidate.

It is worth noting, as we explained in Chapter 7, that disclosure of the information that Holmes might require seems to us least likely to be resisted by school officials. Hence, perhaps small prods from higher governmental bodies could well push many schools or districts voluntarily to disclose general information with respect to school sorting. Such changes could in turn give us a better understanding of what, if anything, might be gained or lost by the aggressive application of Holmes to the school sorting process.

CHAPTER 9

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CHAPTER 9

SCHOOL SORTING AND DISCLOSURE: STATUTORY ANALYSIS

In Chapter 8 we considered constitutional law doctrines by which courts might order disclosure with respect to school sorting. There remains to be considered a few brief matters of statutory law.

I. Existing California School Disclosure Laws

A. Affirmative duties to disclose

In Chapter 3 (pp. 21-54) we set out materials describing (1) California's current disclosure laws that relate specifically to public schools and (2) the ways that some districts comply. On the whole, schools seem readily able to comply with these requirements, as the examples of the parental notice forms demonstrate. (Some, however, could improve their design techniques by learning from other districts.) Moreover, as required by Section 48982 of the Education Code, those materials show that school districts seek to get parents to sign and return an acknowledgment of their receipt of the required notices. Since this existing set of required disclosures and acknowledgment procedures has been operationalized and implemented in all the districts we visited, surely it could be supplemented or expanded to include the disclosures about school sorting we have been considering.

To be sure, the existing rules do not primarily go to sorting decisions of the sort we have been considering. Still, they do require notice to parents of their right to exclude their children from certain courses in the areas of sex education and venereal disease education and to inspect materials used in these classes. Moreover, parents must also be told of the right they have to petition the district to start "alternative schools." Hence districts are at least familiar in a limited way with responding to requirements relevant to the district's educational program. Besides, as we saw in the material presented in Chapter 3, many districts combine the required disclosures with other information about the school curriculum and other matters that they elect to provide to parents. For example, we know that some districts already provide considerable information about open enrollment opportunities and that schools already provide information about elective course opportunities, particularly in high school. Hence, from the technical perspective we see little that would stand in the way of school districts simply incorporating additional required disclosures into their current practices.

The materials we have been discussing are, of course, district-wide notices, and for many of the routine sorting decisions we have considered, school-by-school disclosure would be necessary. Nonetheless, individual school principals also are plainly accustomed to communicating in writing with parents, as Chapters 2 and 3 illustrate. And while these aren't generally required communications, Section 49067 of the Education Code does provide that parents must be notified and called in for a conference if "it becomes evident to the teacher that the pupil is in danger of failing a course." We assume that notices required by that section are provided routinely at the individual school level today.

In sum, particularly with respect to the various levels of information which we have called general, but also with respect to specific information, the kinds of disclosures discussed here could, from an implementation perspective, be readily seen as but a marginal (albeit in some cases substantial) addition to the existing practices.

B. Access to information rights

The Education Code itself in Section 42100 specifically provides that each year a school district's budget must be prepared and kept on file for public inspection; this annnual financial statement must reveal income and expenses for the prior year and proposed expenses for the current year. This provision plainly creates an access right to district-wide financial information.

Far more important, however, are the more general provisions of the California Public Records Act contained in Section 6250 et. seq. of the Government Code. The Public Records Act is California's freedom of information statute and provides access rights of individuals to all sorts of written records existing in schools and school districts. Section 6252 of the Government Code makes clear that school districts are covered. And although the Public Records Act does seem to contemplate that requests be made to the district rather than to the schools, it seems equally clear that records held at the school level are covered as well. Public records are defined as writings containing information relating to the conduct of the public's business. In short, there is a broad presumption in favor of access to everything that the agency maintains in writing.

There are two sorts of exceptions to the broad presumption. Section 6254 lists specific exceptions including "(c) personal, medical or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy; . . . (g) test questions, scoring keys, and other examination data used to administer licensing examinations, examinations for employment, or academic examinations, except as provided for in . . . the Education Code." The first exception plainly means that individual personnel files of teachers are not available to the public, although surely not all disclosures with respect to individual teachers would constitute an unwarranted invasion of personal privacy. Thus, some teacher evaluations might well be open to the public although we know of no determination one way or the other on this question under the California law. The other exception is meant to keep secret actual tests and their answers and not test score results. In any case, provisions of the Education Code (§60600 et seq) and an interpretation of Section 6254(g) by California's Attorney General, 52 Ops. Atty. Gen. 15 (1969), make clear that the public does have access rights to school-by-school results of student achievement on standardized tests given throughout California.

Beyond this list of specific exceptions there is a general exception under which a school district could resist disclosing written matters on the ground that in the "on the facts of the particular case the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record." Government Code Section 6255. There is a little litigation history that would help explain just what information might satisfy this "clearly in the public interest" test. We imagine that none or virtually none of the items we have discussed as appropriate for disclosure would so qualify for secrecy, assuming, of course, we put aside information relating to individual students. As for the latter, state and federal privacy laws govern the release of individual student records to their families and to outsiders. (See California Education Code §49060 et. seq.) Of course, we have not suggested that any disclosure regime should involve giving to families information about specific children other than their own.

Formally, at least, what this suggests is that to the extent things are in writing the California Public Records Act already provides access rights to matters we have considered as candidates for disclosure. There are three reasons, however, why the current statutory situation falls short of what policy analysis might suggest is appropriate disclosure policy. First, as emphasized often above, there is a difference between access rights and affirmative outreach efforts. Hence to the extent that one favors the routine provision of information to parents, the Public Records Act is of no help. Second, much of the information that we have considered as potentially appropriate for disclosure is simply not now available in writing so that even on an access basis it is not open to the public under the Public Records Act. For example, written procedures and criteria governing elementary school teacher assignments probably do not now exist in most schools. Third, and this is a cause for concern about any information policy, not all school districts readily comply with California's Public Records Act. And if they evade their responsibilities under that Act, one has to be especially concerned about creating good controls and incentives that will get them to comply with any new information disclosure scheme.

We suspect that one reason for indifferent compliance with, or resistance to, the Act stems from our sense that hardly any claims are now made under the it. (We note too that the Act is not publicized by school districts in their parental notice forms.) Hence many local school officials are probably unfamiliar with obligations they have. This calls for leadership from the State Department of Education -- training of local leaders, written guidelines and occasional audits of the responses of school personnel when requests are made. An additional problem that schools face is the sheer time it takes for them to reply to requests under the Act; school employees are often very busy with ongoing responsibilities to attend to. Apparently it's permissible under the Act for schools and school districts to impose reasonable costs incurred in gathering and photocopying materials that are requested, although few schools and districts seem to have operationalized such arrangements. In any event, even if reasonable fees could be charged, this still takes the time and attention of personnel away from other activities. To deal with this, it will probably be necessary to get school superintendents and/or principals accountable for designating staff to serve as school information officers. That, however, seems not too difficult to promote.

Finally, people making requests of information from schools may be perceived by the bureaucracy as trying to get information that the bureaucracy doesn't want to give out, notwithstanding its obligation to do so under the Act. This problem and all the related problems of foot-dragging and the like were discussed at length in Chapter 4. As indicated there, we have had some personal, albeit indirect, experience with this problem in connection with our involvement with Lillian Svec Clancy who sought to obtain from every school in a number of northern California counties a large amount of information about themselves. Her objective was to publish an information book on the schools of each county that might be used by people moving to or contemplating moving to the county. Her idea was that since many people seem to choose their residence with schools in mind, they ought to be able to have good information about the local schools before they make their choice. She did not seek or make subjective evaluative comments about the schools, although she did, of course, make some value choices by determining which sorts of information she would gather. In any event, she ran into a great deal of opposition by school officials who resisted her information requests even though many of them were matters she had a right to under the Public Records Act. To be sure, she also asked for information that the school district might not have had in writing; but she thought they could readily put it together and would probably want to have it revealed assuming that her project was going ahead in any event. In the end, after much effort, she was able to get reasonably substantial compliance with her requests in most places and has published one volume as of this writing. This experience suggests the need for persistence that ordinary families acting one by one are not always likely to have. This, of course, is all the more reason for imposing outreach obligation on schools, which can be monitored by small numbers of key people in the community, rather than relying upon each family to fend for itself in asking for and obtaining the information it wants.

II. FTC Proposed Disclosure Rules With Respect to Proprietary Vocational Schools

For some years now the FTC has been trying to adopt rules designed to combat unfair and deceptive practices engaged in by proprietary vocational schools and home study (correspondence) schools. Some of the reforms that the FTC has been trying to impose are substantive, such as a tuition refund policy for those who drop out of such programs and "cooling off" periods that give a short time for new enrollees to back out completely of their contract obligation to pay tuition. Much of the FTC effort, however, has been to impose disclosure obligations on these schools, a remedy that stems from the agency's belief that the advertisements of these schools and the statements in their literature and by their student recruiters are often false or misleading.

Thus far, the proposed regulatory regime has been stymied, most importantly because of a decision of the Court of Appeals for the Second Circuit which in late 1979 invalidated portions of the agency's rule-making just a few weeks prior to the time that the regulations were to go into effect. Katherine Gibbs School (INC.) v. FTC, 612 F. 2d 658 (2d Cir. 1979). Although some of what the FTC was going to require was up held by the court, the agency responded by staying the effective date of the program indefinitely, 45 Fed. Reg. 1011 (1980). In mid-1981 new staff proposals in response to the Gibbs decision were published, 46 Fed. Reg. 35668 (July 10, 1981), but as of mid-1982 the matter had gone no further and wasn't scheduled to be considered by the commission itself until 1983, see 47 Fed. Reg. 29462 (July 6, 1982).

How much this delay is a product of second thoughts about the idea, how much sheer bureaucratic slow motion, and how much a reflection of the Regean administration's anti-regulation stance need not concern us here. Rather, what is of prime interest is the substance of the disclosure regime under consideration by the commission.

The proposed rules contemplate disclosures of two sorts. One is tied in with students' rights to cancel their tuition contracts and is meant to assure that pupils are aware of their substantive rights the FTC is creating. At first blush it seems of no relevance for us since public schools don't charge tuition. Nonetheless, this policy does should how disclosure can be employed in the service of helping those who change their minds to appreciate that there are reasonable avenues open to them. Hence, in this respect the contract cancellation notice provision is akin to the notification of parents of their rights to have their child change schools or teachers after the year begins. And, if the FTC thinks it is critical that adults know how to get out of long term financial commitments to courses of study they don't want to continue, surely this is some evidence in favor of having parents know how they can get their children out of long term compulsory assignments to a teacher or a school they want to escape.

Second, the FTC rules would insist on disclosure with respect to how well the students in the school do. All schools covered by the proposed rules would have to disclose how many of their students "graduate" (or complete the program of instruction) and how many of them drop out. The FTC's main concern here is to inform potential enrollees that for many of these schools enormous proportions of enrollees never complete the program; this should help prospective students who wish to single out schools with high graduation rates. In addition, if

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a school makes any job or earnings claim then it must disclose, pursuant to a form prescribed by the FTC, information about the placement record of its students in terms of jobs obtained and salaries received. The FTC's main concern here is that some schools have advertised "take our course and get a good job" when in fact those who do complete the course don't get work, or don't get work of the sort the program was meant to prepare them for.

Required disclosures of this sort are analogous to the level of disclosure we have described as "information about the attributes of alternatives." Recall, we talked about having schools disclose things such as what students learn in a course and how effective teachers are. The FTC disclosures, of course, by and large go to the whole school rather than to components of it, although if a school has more than one course of study each course of study is to have a separate disclosure package about it. It is noteworthy that the FTC doesn't contemplate required disclosure about the internal operation of these schools, what their individual courses are like and so on. That is a departure from what we have been discussing. Of course, sorting inside the school is not the FTC's focus; it is worried about the entry and exit decisions. On the other hand, the emphasis on student achievement could well be thought appropriate disclosure for public schools. If public high schools had to disclose the success of their programs in terms of how many of their students drop out, how many go on to college, how many get jobs right out of high school and what jobs, this might influence which high schools families sought to get into or avoid. At the same time if public schools disclosed, starting in the junior high school and especially in high school, what they knew about the futures of students who have taken different courses or tracks, that too would let people know early on where pupils are likely headed by one program or another.

To be sure, all high schools don't have the same amount of talent in their student body, and therefore, many might feel that unfair comparisons were being made. Of course, the same is true for these proprietary vocational schools and the FTC wants them to make disclosures anyway. Moreover, data has been developed in many states which adjusts for socio-economic and other factors in the student body; this allows a school to disclose with respect to, say, reading scores how well it is doing in comparison with what was predicted given the composition of its students. Therefore one finds, for example, as among high schools that serve similar low socio-economic class students, there is a substantial variation in how well the students do on tests even if as a group all of these schools students do substantially poorer than do, as a group, the students in schools serving high socio-economic class neighborhoods.

Of course, the FTC's action is prompted by concerns of wide-spread deception. And although many would make similar claims about the public schools, such "deceptions" are of a different sort. Moreover, it is worth remembering that the FTC chose only to try to have these provisions made applicable to proprietary vocational schools and not to ordinary institutions of higher education -- neither the public nor the private non-profit sector. In our terms what this suggests is that the FTC sees substantially greater scope for improvement of "informed choice" in the vocational proprietary sector (and that the political resistance of that sector is probably weaker than would be the resistance of the post-secondary education system as a whole). In all events, whatever the differences, the FTC initiative at least shows another close-to-home example of how disclosure strategies can be the center-piece of efforts intended to get students into the classes in which they in some sense belong.

III. California's Proposed Handbook of Students' Rights and Responsibilities

In 1977, the California State Department of Education seemed on the verge of publishing a handbook of students rights and responsibilities. More than 30 pages long, and written partly in legalese (complete with references to cases and code sections), this handbook would have been distributed to every public school in the state and was meant to serve as a reference work available to pupils, parents and school officials in the school office or library. Individual copies were to be made available for sale at $1.00 each. There was some objection by the State Board and others to the proposed text and the cost of the project and the plan has been delayed.

We note that this handbook would have provided a vast quantity of information that would never be relevant to the great bulk of pupils or their parents. It is not that the rights and responsibilities set out as to compulsory education, dress codes, school explusions, compensatory education and the like wouldn't apply to them, but rather that no issue would ever come up that would call in question their legal duties. The handbook also failed to include much of what we have argued would be important information about school sorting. This is primarily because, as a statewide document, it could not include specific information about those school sorting matters that are under the control of and vary by school and school district.

Hence, while we think the state is to be applauded for giving some attention to the importance of disclosure, this experience shows that the state can not take over and do by itself a single booklet that would serve effectively for everyone. In short, the state can command that pamplets be distributed locally, but it can not readily execute the command itself.

IV. Alum Rock's Disclosure Program Under Its Voucher Experiment

In a well publicized, federally funded experiment, run during the 1970s, public schools in Alum Rock, California (a small district near San Jose) tried out a public school version of the education voucher plan. This is not the place to devote much attention to that experiment, or to examine in detail how well it worked and what wasn't or was learned from it. We do want to note, however, that the during that experiment the Alum Rock district got into the information provision game in a big way. Under the program, in addition to having choices among schools in the district, families had choices within schools; each local school self-consciously divided itself up and offered separate programs which were called "mini-schools." A handbook was then assembled and distributed to families which contained program descriptions prepared by the mini-schools. The district also distributed information about test scores in the different schools and some of the mini-schools gave descriptions of their teachers besides descriptions of their programs. In addition, information counselors were hired who had the responsibility personally to communicate information and advice about the mini-schools to families, with special concern for those families who had the greatest difficult responding to or dealing with the written communications.

This experience at least provides an illustration of how readily local schools can organize and implement a disclosure scheme when they want to. We recognize that some research findings suggest that after some years of its operation many families in the district still did not even realize that the experiment was going on, notwithstanding that somehow a choice had been made for their child. Yet, as we have emphasized throughout, one cannot propose and defend an information system on the assumption that everyone will recieve and understand and employ the disclosure made. Plainly, a number of families in Alum Rock did choose a school out of the neighborhood, and a number of families in Alum Rock did divide up siblings who were close in age, presumably because of their belief that specific different schools better served the children.

In terms of our models, the Alum Rock plan was designed primarily to make people aware of their right to take-up various alternatives and then to provide information to them so that the choice would be an informed one. Although this might have had indirect impact in terms of the consent of the governed, that was not the central objective. (To the extent that community satisfaction with the schools went up during the program, which apparently happened, one can't separate out the effect of providing choice itself from any effect of providing information.) This disclosure regimen was not aimed at the control of official discretion. Indeed, as with the FTC's proposed regulation of vocational schools, the Alum Rock information effort was aimed primarily at entry and exit decisions; it was not aimed at sorting decisions that went on within schools. Hence while there is something to be said for urging districts to copy the Alum Rock practice, and to some extent at least one of the open enrollment districts we visited has done so, it is clear that for one interested in the range of disclosures we discussed earlier, the Alum Rock approach goes toward only one slice of the pie.

V. A Model School Sorting Disclosure Act?

We have concluded that it is premature to propose and endorse a model school disclosure act. Before that one should have more confidence in what the consequences of a disclosure regime are likely to be. We address that problem in the concluding chapter. Nonetheless we will briefly list here some of the features that eventual drafters of a model act ought to consider.

1. State education department authorities probably ought to be given the responsibility for adopting guidelines that will govern local disclosure. They probably ought also to provide model forms that can be employed.

2. The state guidelines should probably contain features designed to ensure that some systematic audit and outside review would be facilitated. Hence, districts should probably be asked to file with the state department copies of the disclosures that they and their schools make. Not only would these be available to the department for audit purposes, but they probably should be available to the public and to researchers concerned about compliance with state mandates.

3. Within each district a similar arrangement would probably be appropriate so that, although schools themselves would presumably do the disclosing, they would be doing so pursuant to directions of the central administration and would report their disclosure activities to the central administration.

4. A decision would have to be made as to which matters would be disclosed as a matter of outreach and which as a matter of access.

5. To the extent that matters were reserved for an access basis, to what extent would there be affirmative outreach disclosure about their availability?

6. Although we have focused on a one way communication, there should be considered what posture schools or districts should take toward family responses to the information.

7. How frequently would notices be distribited?

8. How particularized would they be -- by grade level, by individual families, or by school?

9. With which other disclosures might the new ones be incorporated? Perhaps these are matters best left to local experimentation at the start; over time the state department might learn which approach seem most sensible and most effective so as to be able then to give more clear cut guidance.

10. The method of reaching parents is also a matter of some difficulty and delicacy. Sending messages home with students has certain advantages and disadvantages; so does the use of the mail.

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WHAT NEXT?

I. CONCLUSIONS

Public school officials are constantly making a great number of routine decisions that importantly help to determine the teacher, the course, the school and the like that children experience. Some of these decisions are highly individualized; others are more matters of policy or rules of general application. The decision-making is divided among school personnel, and although there are dominant patterns, schools and school districts vary in what they decide and how they decide it.

These school sorting decisions, taken as a whole, are very important to individual children: which classroom, which ability group, which subject, which school and so on are things that matter in a number of ways.

Schools do not routinely inform parents of school children about these sorting decisions nearly as much as they might. How elementary school teachers are assigned, how junior and senior high school courses and classes are assigned, how one may change schools or teachers, and the like are matters that one generally learns about, if at all, through informal channels, by knowing to ask the right person, etc.

In theory, a wide range of social gains could come from better informing parents about school sorting. We have broadly identified these as (a) increased awareness of opportunities to take-up schooling alternatives (whether courses, teachers, grade levels, or schools), (b) more informed decision-making by parents and children when choices are available, (c) greater public satisfaction with public education (consent of the governed) and (d) better control of official school discretion (error and abuse reduction). Each of these areas of social benefit rests on theoretical models that use information to improve personal and social welfare.

How much room there is in practice for social gain depends in part on how far current reality falls short of utopia and in part on how well information would actually serve the goals that these models suggest it can. In short, it is a matter of how bad things now are, and how well this sort of reform would really work to improve them. We have offered perspectives, arguments and relevant data on these issues. But no firm conclusions about them are easily reached on existing evidence.

Moreover, even if important social gains would be realized from disclosure to parents about school sorting, the question remains whether the gain would be worth the "cost" of the reform. We demonstrated that cost is in part a value question and in part a matter of speculation. We did, nonetheless, identify those areas where, it seems to us, the most favorable social cost benefit calculus exists. In brief, requiring the outreach disclosure of general information about sorting criteria and alternatives and about the sorting process seems promising, as does notifying parents that child-specific and alternative-specific information is available on request. Chapter 7's dicussion fine tunes these generalities.

Political reality sometimes enters to block desirable social reform. One way around that is for reformers to go to the courts, claiming that reform is constitutionally required. We considered how promising this strategy might be with respect to school sorting and disclosure, and we identified plausible applications of "due process" doctrine that ambitious lawyers and judges might embrace. Nevertheless, we explained that we would feel more confident about the use and usefulness of constitutional litigation were we more confident about our cost-benefit calculus that predicts information would yield positive consequences.

II. RECOMMENDATIONS

A. More research is needed. Field and theoretical research on the role and impact of information in improving social welfare is all too rare as a general matter; inattention to its role in education policy is but one, albeit an important, example.

We think it would not suffice, however, simply to concentrate more research efforts on present school sorting disclosure practices. To be sure, one could try to measure how (un)informed in fact parents generally are about school sorting today; and one could try to find places where parents are more informed to try to see how much difference information makes.

But given what we have seen, these places will be difficult to find. And merely relying on political and educational forces now in motion is not likely to produce the diverse disclosure practices we'd like to see studied.

B. Far more promising, we think, would be a set of serious social experiments that could explore different kinds of disclosure arrangements. Federal government experiments with housing allowances and negative income tax plans illustrate patterns for school sorting disclosure experimentation to follow.

There is a special problem with respect to information disclosure, however. Some of the questions that need answering involve the responses of local authorities to coercion from above. Therefore, simply enlisting the voluntary cooperation of some districts, particularly if their cooperation is sweetened by making the experiment costless to them, runs the risk of having an insufficient range of questions studied. This suggests that state-level cooperation is needed; the state, of course, can be enticed to cooperate by financial help, the reduction of federal strings, etc.

We would be enthusiastic about a state-wide experiment that used the institutional technique of an independent consumer information agency for public education. This agency should use the rule-making process of the administrative procedure acts to determine (with public input) what information would have to be provided by schools and districts to parents and what information would be made available on request. We suggest using an independent agency on the notion that if it sees its mission as disclosure, it can be counted on to pursue that purpose vigorously. Simply to add this responsibility to the state department of education, by contrast, runs the risk that the disclosure strategy might be compromised before it has a chance to prove itself. Perhaps giving the state education department responsibility and creating an independent agency could be compared in different locales.

If an independent agency is used, it would have to have powers of enforcement against school districts akin to those that the FTC has. At the same time, however, we would like to see some experimentation with giving parents private rights of actions; thus, they could go to court to force school districts to comply with disclosure requirements imposed by the state. Remedies for local violations could include both injuctions and damages (particularly if a statutory damage amount were enacted). The point of this approach, of course, is not to get districts to pay money, but rather to beef up the incentives to the local officials to comply with disclosure imposed from above.

C. There is probably some urgency to begin the experiments. Many people are now looking for low cost reforms of public education. To some, information disclosure will be an attractive reform of this sort, even without the results of experiments. And as explored in Chapter 8, all it takes is one eager and effective lawyer to make this a national agenda item. In sum, a preventive law perspective calls for wider exploration of school sorting and disclosure now.